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TO AMEND THE FAIR DEBT COLLECTION PRACTICES ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS AND COINAGE

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 237

A BILL TO AMEND THE FAIR DEBT COLLECTION PRACTICES ACT TO PROVIDE THAT ANY ATTORNEY WHO COLLECTS DEBTS ON BEHALF OF A CLIENT SHALL BE SUBJECT TO THE PROVISIONS OF SUCH ACT.

OCTOBER 22, 1985

Serial No. 99-41

Printed for the use of the Committee on Banking, Finance and Urban Affairs

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TO AMEND THE FAIR DEBT COLLECTION PRACTICES ACT

TUESDAY, OCTOBER 22, 1985

House of Representatives,
Subcommittee on Consumer Affairs and Coinage,
Committee on Banking, Finance and Urban Affairs,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Frank Annunzio (chairman of the subcommittee) presiding.

Present: Chairman Annunzio; Representatives Hiler, Morrison, Gonzalez and Roth.

Chairman Annunzio. The subcommittee will come to order. Today the subcommittee meets to hear testimony on H.R. 237, which would amend the Fair Debt Collection Practices Act to remove the exemption for attorney debt collectors contained in the act.

The act has been successful in eliminating unfair and abusive practices aimed at consumers who, through sickness, unemployment or other misfortune, have been unable to meet their financial obligations. The success of the act is due, in large part, to the support of the collectors, led by the American Collectors Association and the Associated Credit Bureaus, to ensure reputable, ethical and honest behavior on the part of the Nation's 4,500 debt collectors. The success of collectors in complying with the act is reflected in the small number of lawsuits brought for violations of the act. While there have been a few suits involving substantive violations of the act, most of the suits filed are technical in nature.

While the act has been a success, there is a large number of debt collectors who consider themselves exempt from the act. This group is the estimated 5,000 attorneys who are involved in debt collection activities. Not only are these attorneys exempt from the provisions of the act, but they claim that their many lay employees are also exempt, even though the lay employees do nothing but collect debts full time with minimal supervision by an attorney.

These attorney debt collection operations are not small operations by any means. The largest debt collection law firm is also one of the fastest growing law firms in the country. According to the 1985 Legal Times law firm survey, it moved up in rank 75 places since the 1984 survey, and is now the 170th largest law firm in the country. It has more branch offices than all but one other law firm in the Nation. It employs over 700 lay persons, in addition to its 121 attorneys. Most of these lay employees have the job title of account representative and do nothing but collect debts full time.

The vast majority of accounts placed with these debt collection law firms never see the inside of a courtroom. In 1983, for example, no suit was brought in 93 percent of the 400,000 accounts handled by the largest firm. These accounts are handled in the same manner as lay collectors. There is only one difference, and that is an important one. These attorney collection firms are not bound by the provisions of the Fair Debt Collection Practices Act.

Many attorney collectors trumpet that fact. One such office advises creditors that the creditor is protected from counterclaims based on violations of the act if the debt is collected by an attorney. Other attorney collection firms have separate collection departments and advise the creditor to contact their lay collection department manager. As one law office claims in its solicitations "Our collection department performs all those functions performed by collection agencies."

There are those who claim that H.R. 237 is unnecessary because attorney violations are rare and can be handled on a case-by-case basis by State and local bar associations. Unfortunately, the record does not bear this out. As early as 1968, the New York City Bar Association noted, "The staggering increase in recent years in installment and other credit sales has had a profound effect on that segment of the bar involved in collection work. The demand of volume threatens to destroy all vestiges of professionalism. The problem is too extensive to be remedied on a case-by-case basis."

The intervening years and passage of the act have not seen any improvement in attorney conduct. Responding to a 1983 survey, the Massachusetts Bar Counsel considered abusive debt collection activities a "serious problem."

Opponents to H.R. 237 like to cite that the Federal Trade Commission has brought only one action in 8 years against an attorney collector. That the policeman is asleep is no evidence that the neighborhood is crime-free. We are all familiar with that situation.

What opponents do not cite is the fact that State bar associations have taken 17 disciplinary actions involving attorney debt collection practices. Of the 17, 9 were warnings, 4 were private admonitions, and 3 were private reprimands. Only one involved more serious sanctions, and that involved misconduct "substantially more serious than abusive debt collection practices," according to the bar association. It is clear that bar disciplinary proceedings have been totally ineffective in policing attorney collection conduct.

What is even more dismal than this record of mild slaps on the wrist—in private at that—is the refusal of most bar associations to discipline at all. Fully half of the bar associations which responded to the 1983 survey reported that no disciplinary actions had been taken against an attorney for conduct that would have been a violation of the Fair Debt Collection Practices Act if engaged in by a debt collector. In other words, half the bar associations of America ignore the act when it comes to attorneys.

The removal of the attorney exemption will not interfere with the practice of law by the nation's attorneys. It will not prevent them from representing the interests of their clients. It will not subject them to onerous regulation. What it will do is assure that consumers are not subjected to the harassment, abuse and unfair tactics that the Fair Debt Collection Practices Act is intended to outlaw. It is time the law applied to attorneys at law.

[The text of H.R. 237 and a section-by-section analysis follow:]

99TH CONGRESS
1ST SESSION

H. R. 237

To amend the Fair Debt Collection Practices Act to provide that any attorney who collects debts on behalf of a client shall be subject to the provisions of such Act.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1985

Mr. ANNUNZIO introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

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A BILL

To amend the Fair Debt Collection Practices Act to provide that any attorney who collects debts on behalf of a client shall be subject to the provisions of such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the last sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)) is amended—

(1) by striking out clause (F) and redesignating clause (G) as clause (F); and

(2) in clause (E), by inserting "and" at the end thereof.

(b) The second sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)) is amended by striking out "clause (G)" and inserting in lieu thereof "clause (F)".

SECTION-BY-SECTION ANALYSIS

H.R. 237, FAIR DEBT COLLECTION PRACTICES ACT AMENDMENT

Section 1 - The bill would remove from the Fair Debt Collection Practices Act the exemption for attorneys who collect debts. The Fair Debt Collection Practices Act prohibits any person who regularly collects debts owed by consumers to a third party from using harassment, abuse or unfair practices in collecting the debts. The Act originally exempted attorneys from its provisions on the basis that attorneys were only incidentally involved in debt collection activities. In recent years a large number of law firms have gone into specialized debt collection, and many of these firms use lay persons full time to collect debts. Repeal of the exemption will require these firms to comply with the same standards of conduct as lay debt collection firms.

Chairman ANNUNZIO. And now the ranking representative on this subcommittee, Mr. Hiler. Have you a statement?

Mr. HILER. I thank the chairman for yielding, and the only statement I have is I look forward to the testimony today as we develop a position as to how we should treat the attorney exemption. I yield back to the chairman.

Chairman ANNUNZIO. I thank you. All witnesses have been told that they can submit a statement of any length for the record. However, their oral presentation this morning will be limited to 10 minutes. By holding to this time limit, we will be able to complete the hearings this morning, and since this room is being used immediately after lunch, we cannot continue this afternoon. So I am asking all witnesses to please honor the 10-minute restriction. I don't care if you have 100 pages in your statement, it will all be in the record, but you are going to talk for 10 minutes so that we can complete the hearings this morning.

As we get toward the end of the session here in Congress our time is becoming less and less. I mean it is limited. I don't know how we are going to get through with the Budget Act and all the other issues facing us.

I will call on our first witness this morning, and then the other witnesses will be called, and they are going to form a panel. Ms. Fortney is the Associate Director for Credit Practices of the Federal Trade Commission. Ms. Fortney, you can proceed in your own manner. Without objection, your entire statement will be made part of the record.

STATEMENT OF ANNE PRICE FORTNEY, ASSOCIATE DIRECTOR FOR CREDIT PRACTICES, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Ms. FORTNEY. Thank you, Mr. Chairman and members of the subcommittee, good morning. I am Anne Price Fortney, Associate Director for Credit Practices in the Federal Trade Commission's Bureau of Consumer Protection. On behalf of the Commission, I would like to thank you for inviting us to appear before you to express our views concerning the attorney-at-law exemption of the Fair Debt Collection Practices Act—the Act—and H.R. 237, which would repeal that exemption. I shall first explain the Commission's current enforcement position regarding the exemption, then outline our concerns about the need for and the potential problems that may accompany a total repeal of the exemption, and finally offer our recommendation for congressional action.

In January, 1984, I appeared before this subcommittee to discuss a legislative proposal identical to the one being considered today. At that time, I noted with pleasure the act's success in significantly reducing abusive, deceptive, and unfair collection practices by debt collectors. Nearly 2 years later, I am happy to report the continuation of that trend. In the period since the act first took effect, we have witnessed a significant reduction in the number of complaints we receive describing the practices that prompted Congress to enact this law, such as severe telephone harassment, damaging contacts with employers, and other acts causing substantial consumer injury.

This notable improvement is due, in part, to the Commission's enforcement efforts. Since 1978, 17 U.S. district courts have entered judgments in cases brought by the Commission for violations of the act, eight of these in the last 3 years. We currently have two major enforcement actions in litigation, and have initiated several nonpublic investigations of debt collection firms in the last 1½ years.

In addition, the Commission consistently endeavors, through its industry and consumer education programs, to improve industry's voluntary compliance. In that regard, we salute the American Collectors Association for the exceptionally effective educational activities it has undertaken to promote its members' compliance with the act.

As to the scope of the exemption, while the act continues to protect consumers in their dealings with independent debt collectors, some uncertainty has arisen regarding the scope and purpose of the attorney exemption. As you know, section 803(6) of the act defines "debt collector" generally to include those persons who regularly collect obligations owed to others, but specifically exempts from coverage "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client."

The Commission believes that the exemption appropriately covers those attorneys who collect debts incidentally in the course of providing other legal services to their clients. However, the Commission believes that a debt collection business is not exempt from the act simply because it is owned or operated by an attorney. To the contrary, the Commission takes the position that the act applies to any business that functions as a traditional debt collection firm and engages in the same kind of collection activity, regardless of whether it is owned or operated by an attorney. The Commission's enforcement action against the law firm of Chicago attorney Milton Shaffner, together with the Commission's formal statement issued in conjunction with the settlement of that case, are the clearest expressions of the Commission's enforcement policy on this issue.

We suggest that it is attorneys or law firms operating much like the law firm in Shaffner that cause the greatest concern, particularly where those attorneys or law firms claim to be exempt from the act. In fact, attorneys or law firms whose operations are virtually indistinguishable from a debt collection agency have no legitimate claim to exemption. In our view, such attorneys have been, are now, and should continue to be covered by the act.

For that reason, we consider it unnecessary to amend the act in order to bring such legal practitioners within its provisions. We suggest, though, that any uncertainty regarding the scope of the exemption might best be resolved if Congress clarifies the act's applicability to attorney debt collection firms. In addition, congressional clarification would assist all concerned parties in evaluating the act's application to those attorneys or law firms whose collection activity falls somewhere between the two extremes of a debt collection agency clearly covered by the act and an attorney or law firm that collects debts occasionally in the course of providing various other legal services to clients.

Reasons to retain some form of the attorney exemption: The Commission believes that the attorney exemption serves a sound purpose with regard to those attorneys whose debt collection activity is ancillary to the other legal services they provide. Since the act's inception, the Commission has received little evidence of any widespread use of abusive debt collection practices by attorneys. Moreover, those attorneys exempt from the act who use unfair or deceptive practices to collect debts can be reached by the Commission's authority under section 5 of the Federal Trade Commission Act.

Further, there are certain practical problems that should be considered in connection with any proposal to repeal the exemption in toto. The act does more than prohibit unfair and deceptive practices; it also establishes specific affirmative requirements that may impose an undue and unjustifiable burden on attorneys whose debt collection activity occupies but a fraction of the total legal services they provide.

One, section 804 and 805(b). Sections 804 and 805(b) generally prohibit debt collectors from communicating with third parties about a consumer's debt, except to obtain location information. Under repeal, these sections would prohibit an attorney from contacting anyone other than a debtor's spouse or, if a debtor is a minor, his parent or guardian, except to obtain location information, in which case the attorney could reveal only his name, that he is confirming location information about the debtor, and if expressly asked, his employer's identity. These restrictions fail to consider the unique, legitimate informational needs attorneys may have in these cases.

For example, these sections would bar attorneys from contacting third parties in an effort to assess a debtor's assets, and, thus, the efficacy of filing suit. Moreover, it is unclear whether an attorney could even suggest to a third party that he needed to contact the debtor about possible legal action involving the debtor. A third party might be willing to provide the debtor's location to an attorney who is about to sue the debtor, even if he or she would be unwilling to give that information to someone perceived as a total stranger.

In these cases, an attorney's inability to reach a debtor could effectively deprive the debtor of the information he needs to understand the situation's urgency.

Two, section 805(c). Section 805(c) provides that if a debtor writes to a collector and states that he refuses to pay or wants the collector to stop contacting him, the collector must cease further collection efforts, except to notify the debtor that a specific remedy may or will be invoked, or that further collection efforts are being terminated. Under repeal, an attorney retained by a debt collector or a client-creditor would be required to so comply. Thus, any attorney assisting in the collection of delinquent accounts would be required to honor a debtor's "cease communication" notice, even in cases where the notice was provided immediately following the attorney's first contact with a debtor.

This section was designed to enable debtors to escape illegal harassment on their own. Not only is there little evidence of such harassment being conducted by attorneys, but the application of section 805(c) to attorneys in these situations clearly diminishes the potential for negotiating an agreement or payment plan. An attorney's options would be limited to recommending suit or suggesting that the client consider the debt uncollectible. To the extent that the application of this section to attorneys would create barriers to out-of-court settlements, it would impose costs on society, whether litigation or in addition to a company's bad debt figure results.

Finally, a problem would be created by section 809. This section was intended to eliminate the problem of debt collectors' dunning the wrong person because of mistaken identity or mistaken facts. The application of this requirement to attorneys, which would occur with repeal of the exemption in section 803(6)(f), is unnecessary. Where an attorney is hired by a debt collector, for example, this notice would already have been furnished to the debtor by the collector. In other cases, there seems to be little reason to require an attorney to verify debts in the effort to resolve disputes where the attorney is about to use the ultimate procedure for such resolutions—litigation.

In conclusion, we believe that these affirmative requirements need not be imposed on attorneys who occasionally collect debts in their practice of law in order to address the current uncertainties surrounding the act's attorney-at-law exemption. Concurrently, however, we believe that attorneys or law firms that operate like traditional debt collection agencies are and should continue to be covered by the act and all its provisions. This is the Commission's enforcement position, however, and while some courts look to the Commission's interpretations of the act when considering the purpose and scope of its provisions, others do not. Only the Congress can fully and definitively clarify the scope of the attorney exemption and establish appropriate limitations. For this reason, the Commission respectfully recommends that Congress determine the extent of the act's applicability to attorney debt collection firms by clarifying the attorney-at-law exemption.

Commissioner Bailey has asked the Commission to include the following statement that only reflects her own views. It is Commissioner Bailey's view that it may be preferable as a practical matter and for reasons of public policy for the Congress to go further. Commissioner Bailey supports the Commission's current law enforcement position.

However, she questions the need for an exemption for attorneys from any of the act's requirements without some further analysis, given the potential for consumer harm and anticompetitive effects as a consequence of their exclusion. Thus, she would support replacing the current exemption for attorneys with certain designated exceptions from the act's affirmative requirements.

Again, we thank the subcommittee for this opportunity to address the attorney exemption and the proposal for its repeal. Although this concludes the Commission's testimony on this issue, I would be happy to answer any questions you might have.

[The prepared statement of Anne Price Fortney on behalf of the Federal Trade Commission follows:]

Statement of

Anne Price Fortney

Associate Director for Credit Practices
Bureau of Consumer Protection
Federal Trade Commission

before the

Subcommittee on Consumer Affairs and Coinage

of the

Committee on Banking, Finance and Urban Affairs

United States House of Representatives

October 22, 1985

Mr. Chairman and Members of the Subcommittee: Good morning. I am Anne Price Fortney, Associate Director for Credit Practices in the Federal Trade Commission's Bureau of Consumer Protection. On behalf of the Commission, I would like to thank you for inviting us to appear before you to express our views concerning the attorney-at-law exemption of the Fair Debt Collection Practices Act ("the Act") and H.R. 237, which would repeal that exemption. I shall first explain the Commission's current enforcement position regarding the exemption; then outline our concerns about the need for and the potential problems that may accompany a total repeal of the exemption; and finally offer our recommendation for Congressional action.

In January 1984, I appeared before this Subcommittee to discuss a legislative proposal identical to the one being considered today. At that time, I noted with pleasure the Act's success in significantly reducing abusive, deceptive, and unfair collection practices by debt collectors. Nearly two years later, I am happy to report the continuation of that trend. In the period since the Act first took effect, we have witnessed a significant reduction in the number of complaints we receive describing the practices that prompted Congress to enact this law, such as severe telephone harassment, damaging contacts with employers, and other acts causing substantial consumer injury.

This notable improvement is due, in part, to the Commission's enforcement efforts. Since 1978, seventeen U.S. district courts have entered judgments in cases brought by the Commission for violations of the Act, eight of these in the last three years. We currently have two major enforcement actions in litigation, and have initiated several non-public investigations of debt collection firms in the last year and a half. In addition, the Commission consistently endeavors, through its industry and consumer education programs, to improve industry's voluntary compliance. In that regard, we salute the American Collectors Association for the exceptionally effective educational activities it has undertaken to promote its members' compliance with the Act.

Scope of the Exemption

While the Act continues to protect consumers in their dealings with independent debt collectors, some uncertainty has arisen regarding the scope and purpose of the attorney exemption. As you know, Section 803(6) of the Act defines "debt collector" generally to include those persons who regularly collect obligations owed to others, but specifically exempts from coverage "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client."

The Commission believes that the exemption appropriately covers those attorneys who collect debts incidentally in the course of providing other legal services to their clients. However, the Commission believes that a debt collection business is not exempt from the Act simply because it is owned or operated by an attorney. To the contrary, the Commission takes the position that the Act applies to any business that functions as a traditional debt collection firm and engages in the same kind of collection activity, regardless of whether it is owned or operated by an attorney. The Commission's enforcement action against the law firm of Chicago attorney Milton Shaffner for violations of the Act by and through its non-attorney employees,[1] together with the Commission's formal statement (attached) issued in conjunction with the settlement of that case, are the clearest expressions of the Commission's enforcement policy on this issue.

We suggest that it is attorneys or law firms operating much like the law firm in Shaffner that cause the greatest concern, particularly where those attorneys or law firms claim to be exempt from the Act. In fact, attorneys or law firms whose operations are virtually indistinguishable from a debt collection agency have no legitimate claim to exemption. In our view such attorneys have been, are now, and should continue to be covered by the Act.

For that reason, we consider it unnecessary to amend the Act in order to bring such legal practitioners within its provisions. We suggest, though, that any uncertainty regarding the scope of the exemption might best be resolved if Congress clarifies the Act's applicability to attorney debt collection firms. In addition, Congressional clarification would assist all concerned parties in evaluating the Act's application to those attorneys or law firms whose collection activity falls somewhere between the two extremes of a debt collection agency clearly covered by the Act and an attorney or law firm that collects debts occasionally in the course of providing various other legal services to clients.

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[1] United States v. Shaffner, No. 83-C3130 (N.D. Ill., May 5, 1983) (consent judgment).

Reasons to Retain Some Form of the Attorney Exemption

The Commission believes that the attorney exemption serves a sound purpose with regard to those attorneys whose debt collection activity is ancillary to the other legal services they provide. Since the Act's inception, the Commission has received little evidence of any widespread use of abusive debt collection practices by attorneys. Moreover, those attorneys exempt from the Act who use unfair or deceptive practices to collect debts can be reached by the Commission's authority under Section 5 of the Federal Trade Commission Act.[2]

Further, there are certain practical problems that should be considered in connection with any proposal to repeal the exemption in toto. The Act does more than prohibit unfair and deceptive practices; it also establishes specific affirmative requirements that may impose an undue and unjustifiable burden on attorneys whose debt collection activity occupies but a fraction of the total legal services they provide.

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[2] The Commission obtained a number of orders against attorneys for unfair and deceptive practices of the type the Act prohibits before the Act's passage. These include New Process Co., Inc., et al., 87 F.T.C. 1359, 1370 (1976); Compact Electra Corp., et al., 83 F.T.C. 547, 568-69 (1973); Wilson Chemical Co., 64 F.T.C. 168 (1964). See also, Pay 'N Save Corp., 86 F.T.C. 688 (1975) and Commercial Service Co., Inc., 86 F.T.C. 467 (1975).

1. Sections 804 and 805(b)

Sections 804 and 805(b) generally prohibit debt collectors from communicating with third parties about a consumer's debt, except to obtain location information. Under repeal, these sections would prohibit an attorney from contacting anyone other than a debtor's spouse or (if a debtor is a minor) his parent or guardian, except to obtain location information, in which case the attorney could only reveal his name, that he is confirming location information about the debtor, and, if expressly asked, his employer's identity. These restrictions fail to consider the unique, legitimate informational needs attorneys may have in these cases. For example, these sections would bar attorneys from contacting third parties in an effort to assess a debtor's assets, and thus, the efficacy of filing suit. It is unclear whether an attorney could even suggest to a third party that he needed to contact the debtor about possible legal action involving the debtor. A third party might be willing to provide the debtor's location to an attorney who is about to sue the debtor, even if he or she would be unwilling to give that information to someone perceived as a total stranger. In these cases, an attorney's inability to reach a debtor could effectively deprive the debtor of the information he needs to understand the situation's urgency.

2. Section 805(c)

Section 805(c) provides that if a debtor writes to a collector and states that he refuses to pay or wants the collector to stop further collection efforts, the debt collector must cease further collection efforts, except to notify the debtor that a specific remedy may or will be invoked, or that further collection efforts are being terminated. Under repeal, an attorney retained by a debt collector or a client-creditor would be required to so comply.[3] Thus, any attorney assisting in the collection of delinquent accounts would be required to honor a debtor's "cease communication" notice, even in cases where the notice was provided immediately following the attorney's first contact with a debtor.

This section was designed to enable debtors to escape illegal harassment on their own. Not only is there little evidence of such harassment being conducted by attorneys, but the application of Section 805(c) to attorneys in these situations clearly diminishes the potential for negotiating an agreement or payment plan. An attorney's options would be limited to recommending suit or suggesting that the client consider the debt uncollectible. To the extent that the application of this section to attorneys would create barriers to out-of-court settlements, it would impose costs on society, whether litigation or an addition to a company's bad debt figure results.

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[3] In cases where an attorney is hired or retained by a debt collector, it is important to consider whether a debtor's "cease communication" notice to a debt collector would constitute notice to the attorney. We urge that this issue be addressed in the process of considering any proposal to repeal the exemption.

3. Section 809

Section 809 requires debt collectors to furnish debtors with a prescribed notice setting forth the elements of the debt, the consumer's rights, the procedures available to dispute the debt, and the debt collector's obligation once the debt is disputed. It also requires a debt collector who receives a debtor's written notice of dispute to cease further collection efforts until he has obtained verification of the debt and mailed it to the debtor.

Section 809 was intended to eliminate the problem of debt collectors' dunning the wrong person because of mistaken identity or mistaken facts. The application of this requirement to attorneys, which would occur with repeal of the exemption in Section 803(6)(f), is unnecessary. Where an attorney is hired by a debt collector, for example, this notice would already have been furnished to the debtor by the collector.[4] In other cases, there seems to be little reason to require an attorney to verify debts in the effort to resolve disputes where the attorney is about to use the ultimate procedure for such resolutions -- litigation.

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[4] Of course, one might argue that, in these situations, the collector's notice in accord with this section would serve for purposes of an attorney's follow-up efforts on an account. We suggest that this issue be duly considered, including the extent to which such an attorney would be responsible for determining conclusively that the debtor has received the notice prescribed by the Act.

Conclusion and Recommendation

We believe that these affirmative requirements need not be imposed on attorneys who occasionally collect debts in their practice of law in order to address the current uncertainties surrounding the Act's attorney-at-law exemption. Concurrently, however, we believe that attorneys or law firms that operate like traditional debt collection agencies are and should continue to be covered by the Act and all its provisions. This is the Commission's enforcement position, however, and, while some courts look to the Commission's interpretations of the Act when considering the purpose and scope of its provisions,[5] others do not.[6] Only the Congress can fully and definitively clarify the scope of the attorney exemption and establish appropriate limitations. For this reason, the Commission respectfully recommends that Congress determine the extent of the Act's applicability to attorney debt collection firms by clarifying the attorney-at-law exemption.

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[5] Bingham v. Collection Bureau, Inc., 505 F. Supp. 864 (D.N.D. 1981); Alaska v. O'Neill Investigations, 609 P. 2d 520 (1980); Pressley v. Capital Credit and Collection Service, Inc., 794 F. 2d 1309 (9th Cir. 1984).

[6] Staub v. Harris, 626 F. 2d 275 (3d Cir. 1980); Blackwell v. Professional Services, 526 F. Supp. 535 (N.D. Ga. 1981).

Commissioner Bailey has asked the Commission to include the following statement that only reflects her own views. It is Commissioner Bailey's view that it may be preferable as a practical matter and for reasons of public policy for the Congress to go further. Commissioner Bailey supports the Commission's current law enforcement position. However, she questions the need for an exemption for attorneys from any of the Act's requirements without some further analysis, given the potential for consumer harm and anticompetitive effects as a consequence of their exclusion. Thus, she would support replacing the current exemption for attorneys with certain designated exceptions from the Act's affirmative requirements.

Again, we thank the Subcommittee for this opportunity to address the attorney exemption and the proposal for its repeal. Although this concludes the Commission's testimony on this issue, I would be happy to answer any questions you might have.

COMMISSION STATEMENT ON THE FAIR DEBT COLLECTION PRACTICES ACT

The Federal Trade Commission has accepted a consent judgment against an attorney, Milton Shaffner, doing business as the Law Offices of Milton Shaffner. The judgment settles allegations that Mr. Shaffner, by and through certain of his non-attorney employees, violated several provisions of the Fair Debt Collection Practices Act. The judgment imposes certain restrictions on Mr. Shaffner and his non-attorney employees.

Alleged violations include improper communications with third parties and improper communications at debtors' workplaces when collectors knew or had reason to know that debtors' employers prohibited such contacts. Mr. Shaffner's acceptance of the consent judgment does not constitute an admission of any of the allegations contained in the Commission's complaint.

As this is the Commission's first case involving a debt collection agency owned and operated by an attorney, the Commission is issuing this statement to clarify its enforcement policy in this area. The Fair Debt Collection Practices Act does not apply to "any attorney at law collecting a debt *as an attorney on behalf of and in the name of a client*." 15 U.S.C. 1692(a)(6)(F) (emphasis added). The Commission therefore has no intention of applying the prohibitions of the Fair Debt Collection Act to attorneys who collect debts in the course of their provision of professional legal services. Non-attorney employees such as paralegal or clerical personnel will also be treated as falling within this exemption, where the attorneys supervise and control those non-attorney subordinates as part of the provision of legal services.

However, a very different case is presented by a traditional debt collection business which happens to be owned or operated by an attorney. Such businesses are engaged primarily in the collection of debts (rather than the provision of professional legal services), and non-attorney employees typically bear primary or even exclusive responsibility for handling and processing the consumer accounts. For example, non-attorney employees may evaluate consumer files obtained from creditors, handle all mail and telephone contacts with debtors, keep creditors informed of the debtor's account status, negotiate settlements, make payment arrangements, and make other major decisions concerning the handling of an account. Sometimes the attorney's only role in the process is to sign his or her name to the dunning letter. In short, the non-attorney employees of these firms are engaged in activities that are virtually indistinguishable from the operation of a traditional debt collection agency. It is apparent from the Act that Congress did not intend to exempt such businesses (or their owners or employees) from the act's prohibitions. See *FTC v. Milton Shaffner*, 626 F.2d 36 (7th Cir. 1980). These businesses therefore may not engage in any practices prohibited by the Fair Debt Collection Practices Act.

Chairman ANNUNZIO. We thank you for your testimony this morning.

Now, Ms. Fortney, you claim that attorneys exempt from the act who use unfair or deceptive practices to collect debts are subject to the Commission's authority under section 5 of the Federal Trade Commission Act. How many times since the passage of the act in 1977 has the Commission exercised such authority?

Ms. FORTNEY. The Commission has not brought any lawsuits since 1977. However, the Commission continues to respond to complaints we receive regarding acts by attorneys which could violate section 5. And I wish to emphasize the Commission continues to receive very, very few complaints from consumers about attorneys.

Chairman ANNUNZIO. You have received very few complaints, therefore, that is reason enough for the inaction in your agency. I mean, you don't go out and look for problems, they have to bring problems to you.

Ms. FORTNEY. Mr. Chairman, I would like to add that in preparing our annual report to Congress, which was filed this spring, we went back and tabulated the complaints we received from consumers concerning debt collection activity. There were slightly more than 2,000 complaints. Of those slightly more than 2,000 complaints, only 42 concerned attorneys; and of those 42 letters, there were only 29 that contained allegations which could, if in fact substantiated by the facts, indicate violations of either section 5 or the Fair Debt Collection Practices Act.

When I say very, very few, I think it is in relation to the total number of complaints we received.

Chairman ANNUNZIO. Mr. Prins has one question.

Mr. PRINS. I wanted to follow up on that. When you receive a complaint, you put the wheels in motion and send an investigator out to determine whether the complaint is valid, and then you have a hearing on each individual complaint, and then you take action. That is the way it works, isn't it?

Ms. FORTNEY. No, sir. As you know, the Commission is not empowered to act on behalf of individual consumers. When we have evidence that there appear to be the kinds of practices, the kinds of abusive conduct that warrant the Federal Government getting involved in this area, then we begin an investigation and conduct——

Mr. PRINS. The point I was getting at is you don't act on individual complaints, do you?

Ms. FORTNEY. No, we don't.

Mr. PRINS. There is no reason for anybody to write you with any kind of complaint because they are not going to get any action on it, and I think that was the point the chairman was trying to make. The fact that you are not getting complaints doesn't mean there are no problems, it just means the consumers realize that your agency is not one that is going to solve their problems.

Ms. FORTNEY. There are over 2,000 consumers that write to us every year about debt collection activity who have problems they want to bring to our attention.

Chairman ANNUNZIO. In your testimony today, and before the subcommittee last year, and in four consecutive annual reports under the Fair Debt Collection Practices Act, the Commission has suggested that Congress clarify the act's applicability to the attorney debt collection firms. Not once has the Commission suggested legislative language to accomplish that need. Precisely what amendments does the Commission believe are in order?

Ms. FORTNEY. Mr. Chairman, the Commission does now have language to propose, and this is what we would suggest be inserted in the current exemption. "Except this exemption does not apply to any person who owns, operates or is employed by a firm whose principle business is the collection of debts." We think that would clarify the current scope of the exemption.

Chairman ANNUNZIO. Can you get the language to Mr. Prins as soon as possible, so the subcommittee can consider it in a markup of the legislation?

Ms. FORTNEY. Yes, sir.

Chairman ANNUNZIO. Mr. Hiler.

Mr. HILER. I thank the chairman.

Ms. Fortney, has the FTC developed any figures for the total amount of debt collection activity that takes place? Are you aware of any figures developed by someone else?

Ms. FORTNEY. We are not aware of any surveys that have been conducted or total figures.

Mr. HILER. In the 29 letters you say the FTC looked into relative to complaints and that there seemed to be substance to the complaint, what was the nature of those complaints or the substance of the complaints?

Ms. FORTNEY. A number of these letters contained allegations of more than one possible violation. I would like to go through and give you the totals. Nineteen of these involved threats of lawsuits. Now, again, these are just what the consumer alleged the attorneys said. And, in fact, there may have been a threat of a lawsuit, so we don't know if this is a violation. Nineteen involved threats of lawsuits, eight involved threats of garnishment; five threats of attachment, and five threats of third-party contacts. There was one threat of violence, there were two allegations of abusive language, there were two threats that the debtor would be put in jail or arrested, there were two threats of non-judicial disposition of property, there were two allegations of repeated telephone calls, there was one allegation of a suit in a distant forum, and one allegation that the envelope that the debtor received contained the word "collections" on the outside.

Mr. HILER. In terms of the several thousand, 2,000, or approximately 2,000 complaints that you have gotten that did not relate to the attorney exemption, what was the substance of those alleged complaints?

Ms. FORTNEY. We have not gone back and totalled them in the same way simply because there were so many complaints. But generally they would cover the same kinds of conduct, and also from my recollection, would include calling people in the middle of the night, abusive language, and threats that the collector did not intend to follow up on.

Mr. HILER. Has the FTC been in touch with any of the local or State bar associations or Better Business Bureaus to look into the attorney exemption difficulty or problem?

Ms. FORTNEY. We have—we work very closely with State and local authorities and Better Business Associations in this regard.

Whenever we think there may be a problem involving a debt collector of any kind, including an attorney engaging in collection activity, we contact the local authorities to see if they have additional complaints or evidence of violations.

So as part of our overall investigative activity, we do deal with State and local authorities and Better Business Bureaus.

Mr. **Hiler**. What have you found in dealing with them?

Ms. **Fortney**. We have found generally the same kind of information that we receive, namely, that the threats and the abusive conduct that led to the enactment of this legislation do not appear to be a problem with attorneys.

Mr. **Hiler**. And in fact it has gone down a great deal with all debt collection?

Ms. **Fortney**. That is true. The number of complaints received—I think we can say this across the board—has gone down with regard to all forms of debt collection.

Mr. **Hiler**. Thank you.

I yield back, Mr. Chairman.

Chairman **Annunzio**. Thank you.

Mr. Morrison.

Mr. **Morrison**. Thank you, Mr. Chairman.

Ms. Fortney, with respect to the standards of condition other than the affirmative duties you itemize in your testimony, is there any reason that an attorney or a law firm or anybody working for an attorney should be permitted to behave contrary to any of those standards in the collection of debts?

Ms. **Fortney**. No, sir, there is not.

Mr. **Morrison**. So the prohibited behavior that is in the act really should apply to attorneys. Is that your testimony?

Ms. **Fortney**. What we are saying is that because we received such a very, very small percentage of complaints involving attorneys, because all the other information that we have indicates that very few attorneys are engaging in these practices, there is no need to amend the legislation.

Mr. **Morrison**. But if all of them are obeying it, it won't hurt them any if we amend it. It will only hurt the people violating it, right?

Ms. **Fortney**. You would create the risk of a private cause of action.

Mr. **Morrison**. I assume there is a risk of private cause of action that won't go anywhere unless there is something that can be proved. Well, OK, let me just go on to the other two points that I would like to explore.

Apparently, your concern is if we just wipe clean the attorney exemption, we are going to impose on attorneys duties that are inconsistent with other things that attorneys need to do in the litigation of debts. Is that really what your focus is in terms of what you call affirmative duties?

Ms. **Fortney**. Yes, sir.

Mr. **Morrison**. You are concerned about the litigation of the debt and the fact this might stand in the way of the efficient disposition of litigated debt collection. Is that right?

Ms. **Fortney**. We think attorneys would not anticipate that they would have to comply with these affirmative requirements in taking the steps they would normally take to prepare for litigation.

Mr. **Morrison**. So it would add to their duties.

Ms. **Fortney**. Add to their duties.

Mr. **Morrison**. Now one of the concerns is verification, and that the verification process would in some way be duplicative of what had happened before. Do you have evidence one way or another on how often lawsuits are brought for unfounded or unjustified claims of a debt? Do you get data one way or the other on that?

Ms. **Fortney**. We don't have data one way or the other. The thing I would like to add though is that it seems to me if the consumer receives a notice from a debt collector regarding a debt that he disputes, he may very well ignore it, may disregard it. If a debtor receives a communication from an attorney that a lawsuit is about to be filed, the incentive at that point is for the debtor to contact the attorney.

Mr. **Morrison**. So that would argue in favor of the verification process because the consumer is likely to take it more seriously.

Ms. **Fortney**. I think because the consumer is likely to take it more seriously, you don't need the extra form required in that situation. Verification is going to occur naturally.

Mr. **Morrison**. My own experience is that lots of previously verified or otherwise challenged debts are in fact referred for collection and the verification process isn't taken necessarily seriously before referral.

Let me go on and ask you about the other item which is settlement discussions. You are concerned that the resolution of a debt may be interfered with because a consumer might say I don't want to be harassed or contacted any further and that would leave the attorney with the only alternative of bringing a lawsuit and going to court. Wouldn't it be possible to write a very narrow exemption to that particular duty for good faith negotiation of settlement in anticipation of litigation that would take care of your concern?

Ms. **Fortney**. It would be possible to write such an exemption, yes.

Mr. **Morrison**. If we did that, then there would really be no reason, nothing that you have said really would be in opposition to the passage of the legislation as it is presently pending other than some need to deal with this settlement question. At most we would be imposing a duplicative verification process on attorneys; is that right?

Ms. **Fortney**. We have also spoken to the restrictions that are imposed by the operation of sections 804 and 805 on the attorney's ability to contact third parties when the attorney is about to file a lawsuit.

But the other thing I want to add is that the Commission's position remains that there is no evidence of any widespread abuse by attorneys that would warrant the repeal of the exemption in this regard, and the attorneys that are currently engaged in debt collection practices or the operation of debt collection firms are covered by the law.

Mr. **Morrison**. Thank you, Mr. Chairman.

Chairman **Annunzio**. Thank you very much.

Mr. Roth.

Mr. **Roth**. Thank you, Mr. Chairman.

Ms. Fortney, let me see if I understand your testimony correctly. You said that your Commission has had 2,000 complaints in the last year?

Ms. **Fortney**. This figure was compiled for the annual report, and it covers the time period from February 1, 1984, through January 31, 1985. We have not gone back and totaled the number since that time.

Mr. **Roth**. But say roughly in the last year that you have the records for, you had about 2,000 complaints?

Ms. **Fortney**. About 2,000 complaints.

Mr. **Roth**. About 29 dealing with attorneys?

Ms. **Fortney**. We received 42 letters and 29 of these contained evidence or information that the consumer was complaining about some practice that if engaged in by a debt collector would violate the Fair Debt Collection Practices Act.

Mr. **Roth**. We didn't look at the attorney's side, so maybe a few of those would be erased. But anyhow, let's say you had 29. We have a nation here of 230 million people and you have only 2,000 complaints in the Commission, it would seem to me if it ain't broke, don't fix it.

It would come under that heading. That is your conclusion?

Ms. **Fortney**. That is our conclusion. And I also wish to reiterate that the Fair Debt Collection Practices Act is working. We have seen a significant reduction in the total number of complaints that are received, and we think that is an indication that collectors, debt collectors are complying with the law.

But, in addition, we do think this smattering of complaints is a strong indication there is no need to repeal the exemption.

Mr. **Roth**. I would tend to agree with you. I am not a lawyer but we have 199 lawyers just in the House itself, so they don't need any defending here in Congress. But it would seem to me that your conclusion is correct. I happen to come from small business and we have to look at the other side too.

For every bill that isn't paid, the general public has to pay it. If you only had 2,000 complaints in the entire Nation I don't think we have got a problem here.

Thank you, Mr. Chairman.

Chairman **Annunzio**. Mr. Gonzalez.

Mr. **Gonzalez**. Thank you, Mr. Chairman, and thank you, Ms. Fortney, for your presence and your testimony.

I think most of the pertinent questions with respect to the suggested amendments have been asked, but I am interested in a pattern where you have a purely 100 percent local practice, an attorney who may or may not have a good percentage of his business debt collecting as differentiated from a person or a firm that is involved at a national interstate level. Does your pattern of complaints in this respect indicate any such significant difference?

Ms. **Fortney**. We have not looked at the complaints to determine that. Based on our reading, there doesn't appear to be much difference.

Mr. **Gonzalez**. Granted that to date any use of the telephone, any use of the mails would bring it within the scope of an interstate transaction, I still think that there is a vast difference in appearance in behavior, as I have had reason to see from some local constituent experience, I just was interested in knowing if the record of those cases that had been brought to the attention of the Commission had indicated any real difference between the volume of those that eminated from attorneys crossing State lines as a matter of practice and those that were purely wholly locally situated.

Ms. FORTNEY. Not to my recollection.

Mr. GONZALEZ. Thank you very much.

Thank you, Mr. Chairman.

Chairman ANNUNZIO. Thank you, Mr. Gonzalez.

Ms. Fortney, we appreciate your being here today. You know, this law is about 10 years old. I don't now how time passes us by, but I think it was 1976 when we had the full scale hearings in this room on the debt collection bill. Things are more calm today, they are much more peaceful. That is to the credit of the debt collectors of America, as I said in my opening statement, who really, really cooperated with the legislation that was passed by the Congress of the United States.

I am hoping that these——

Mr. GONZALEZ. You don't happen to have any masked witnesses?

Chairman ANNUNZIO. No masked witnesses today, no clearing of the hearing room for bomb threats made to the Members of Congress. The point I am making is that we have a statute that seems to have gained the respect of everyone who is involved in the industry, and we should be very careful that we close that loophole so that there are no exemptions. If a man wants to act as a debt collector he should comply with the law. If he doesn't want to act as a debt collector he puts it aside. It is that simple. And I can't understand how an agency of the Government—we are looking forward to your suggestion—we want you to cooperate with us and we want you to understand we are not trying to make your statistics look good. What we are trying to do is alleviate some of the hardships that the consumers are faced with. That is the business of this subcommittee.

So I thank you very, very much.

I would like to get to the other witnesses. Mr. John Johnson, executive vice president, the American Collectors Association. He is accompanied by Mr. Dalton Sheppard, president, ACA, and Mr. Jack Fletcher, national legislative committee representative of the ACA.

Mr. Johnson, if you will take your seat.

Mr. Walter ~~R.~~ Kurth, president of the Associated Credit Bureaus, accompanied by Mr. D. Barry Connelly, senior vice president of ACB, and Mr. Steve Fier, director of government relations of ACB.

The third witness is Mr. Alan Fox, legislative representative of the Consumer Federation of America.

Mr. Robert J. Sheridan, and Affiliates, the fifth witness, Mr. Leonard O. Abrams, Berman, Fagel, Haber, Maragos & Abrams, representing the Commercial Law League of America.

Mr. Abrams, will you take your seat?

Ms. Karen Leichtnam, legislative assistant of HALT, Americans for Legal Reform.

We look like the United Nations this morning trying to solve some of the problems in Nicaragua and the Middle East.

I am glad to have you all here. You all have been very, very cooperative as far as this subcommittee is concerned and it is through the efforts of many of you seated at the table this morning that the law has worked as well as it has. For that I want to express my deep appreciation, and I want to thank the good Lord. I haven't seen some of you in 10 years. You all look about the same. I think we haven't aged that much. I hope I have not.

Jack Fletcher is really growing his hair.

Mr. FLETCHER. Thank you, Mr. Chairman.

Chairman ANNUNZIO. I thank you very much.

The first witness is Mr. John W. Johnson. As I recall, Mr. Johnson, you are a former member of the Minnesota Legislature?

Mr. JOHNSON. Yes, sir.

Chairman ANNUNZIO. You were also a candiate for Governor. Does my memory serve me right?

Mr. JOHNSON. Your memory is very accurate.

Chairman ANNUNZIO. I thank you very much. You have 10 minutes and your entire statement will be made part of the record.

STATEMENT OF JOHN W. JOHNSON, EXECUTIVE VICE PRESIDENT, AMERICAN COLLECTORS ASSOCIATION

Mr. JOHNSON. Thank you. It is good to see you again and be back here after living for these last 7 years now with the FDCPA.

My name is John Johnson, I am the executive vice president of the American Collectors Association. ACA is an international association of about 3,100 debt collection businesses. We have members in 33 countries, but primarily located here in the United States.

As you will recall ACA supported the Fair Debt Collection Practice Act back in 1977 and 1978 and we have worked extensively to educate our members and credit grantors as to the content of the law even though credit grantors are not covered by it.

Many third party debt collections are made by the approximately 5,000 lay agencies in the country. However, there are about 5,000 attorneys who are actively engaged in consumer debt collection work and the Federal Trade Commission in each of their reports to Congress in recent years has stated the number of attorneys involved in consumer debt collection work is growing every year, and it continues to grow.

And although the intent of the law is to cover all third party debt collectors there has been some misunderstanding and some misinterpretation of that intent. We feel that H.R. 237 clears up that area in such a way there cannot be any further question of the fact the law applies to every third party debt collector and debt collection regardless of who might owe it.

Quite a bit has been said about the number of complaints filed against lay collectors and filed against attorneys. I think the subcommittee should know if they are not aware that a great deal of publicity has been given to the fact there is a Federal law covering lay debt collectors and this publicity in itself has generated a number of complaints.

In other areas such as the State of California lay collectors must put a sentence at the bottom of each collection notice saying if you have any reason to believe you are not being treated fairly you are invited to complain and give us an address and phone number to call.

In addition, some of the settlements reached by the Federal Trade Commission staff with various debt collectors have the same requirement. We call it the invitation to complain.

So thousands of letters are going out now from lay collection agencies every day with a legend right on the bottom inviting the debtors to complain to the Federal Trade Commission or State authorities if they feel they are not being treated fairly or they don't owe the debt or for some other reason.

With this many invitations to complain going out I am amazed the number of complaints are so small coming back against the lay collectors. To the best of my knowledge not a single collection attorney in the country invites debtors to complain against them and the work they are doing.

In addition, as far as involvement goes, in our written testimony, which is quite thick and we have submitted, Mr. Chairman, for the sake of the record, we have included two or three advertisements used by collection attorneys, and one of the points they used to solicit accounts for collection is such things as this—"The advantage to you, and that is to the credit grantor, your member attorney is exempt from requirements of the Fair Debt Collection Practices Act of 1978." The attorney soliciting the account for collection points out this is an advantage to the creditor, the attorney does not have to follow that law when attempting to collect these accounts.

This particular one is used by an organization which calls itself a national network of law firms specializing in collection. That one comes from Walnut Creek, CA. Here is one from Boston, MA. One of the advantages of doing business with this law office in collecting past due accounts is "exemption from Federal Fair Debt Collection Practices Act." It is this kind of thing some attorneys are using to indicate they can do a better job of collecting than can the lay collectors because you are not required to comply with the Federal law that governs the techniques and practices they use. There is more of this sort of thing in our testimony, and copies of a number of letters and advertisements of this sort.

ACA strongly supports H.R. 237 and we again want to thank the chairman and the members of the subcommittee for this hearing.

We will be happy to respond to any question.

With me, Mr. Chairman, this morning are two members of ACA who would like to make brief statements. The first is the president of ACA this year from Columbia, SC, Mr. Dalton Sheppard, and the second is the chairman emeritus of the legislative council, whom you will recall testified in favor of the FDCPA back in 1977, and 1978 from Nashville, TN, Mr. Jack Fletcher.

[The prepared statement of the American Collectors Association, Inc., with attached exhibits, follows:]

STATEMENT OF
AMERICAN COLLECTORS ASSOCIATION, INC.

CONCERNING H.R. 237

SUBCOMMITTEE ON CONSUMER AFFAIRS AND COINAGE
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 22, 1985

The members of the American Collectors Association, Inc. (ACA), express their appreciation to the Chairman and the members of the Subcommittee for holding this hearing on H.R. 237 and for giving our association the opportunity to present this statement.

H.R. 237, which would eliminate the attorney exemption under the Fair Debt Collection Practices Act (FDCPA) is important consumer legislation. If enacted, consumers will have recourse against lawyers who harass and abuse them when collecting debts. Currently, the exemption from the FDCPA that lawyers enjoy shields them from civil actions brought by consumers. In addition, H.R. 237 would eliminate unfair competition by providing the same debt collection rules for all third party debt collectors.

ACA contends that if lawyers are going to work as debt collectors, they should operate under the same set of rules as debt collectors. It is our position that the FDCPA provides minimally acceptable standards for third party debt collectors, and no one engaged in collecting consumer debts should be exempt. Accordingly, ACA strongly supports this legislation, and urges the Subcommittee to report H.R. 237 to the House Banking, Housing and Urban Affairs Committee.

BACKGROUND

The American Collectors Association, established in 1939, is an international organization of approximately 3,100 debt collection services employing over 40,000 people nationwide. Members include sole proprietorships, partnerships and corporations, ranging from one-person offices to firms with more than 100 employees. Member offices are located in metropolitan areas, in smaller urban areas, and in rural communities across the nation.

Headquartered in Minneapolis, Minnesota, in its own building with a full-time staff of 70, ACA provides its members with educational material and seminars, research, guidance with individual problems, insurance, data processing services, and help in complying with the many laws which govern the industry. ACA members comply with a strict code of ethics and the federal FDCPA as well as individual state laws.

ACA members handle the collection of past-due retail, professional and wholesale accounts receivable for nearly 1 million credit grantors. Last year over $12 billion in past-due accounts were referred to ACA members for collection. To collect those accounts, ACA members contacted more than 20 million consumers who had promised to pay for goods or services by specific dates but who failed to keep those promises. These contacts resulted in the return of nearly $3 billion to credit grantors.

In addition to the billions of dollars returned to private sector credit grantors, several ACA members in the last year, under contract with agencies of the federal government, returned millions of dollars to the coffers of the U.S. Treasury.

In a typical situation, when a bill owed by a consumer debtor to a credit grantor becomes past due, the credit grantor will continue to send statements or overdue notices for one to three months. Then, if the consumer ignores those statements, the credit grantor will usually send one or two collection notices and make at least one collection telephone call before referring the account to a collection service. The average account coming to an ACA member collection service is already six or more months past due, and the consumer debtor has already failed to respond to perhaps six or more different reminders or requests from the credit grantor himself.

To handle their own enormous volume of collection work, all larger credit grantors have their own full-time collection departments. The largest ones have dozens of full-time telephone collectors to contact those consumers who have failed to keep their original payment agreements.

Despite extensive efforts by creditors, a substantial number of past-due accounts are referred to ACA members, representing a high percentage of each credit grantor's net profit. For example, if a business operates with a profit margin of two percent, and if one-half of one percent of that business' gross sales end up in past-due accounts which have to be referred to a professional collection service, it means that twenty-five percent of that business' profit is lost unless a collection specialist can make some recovery.

Although the collection industry is made up of only about 5,000 full-time, predominantly small, business offices, collection specialists handle a volume of accounts representing a significant part of the potential net profit, or potential net loss, of tens of thousands of businesses and professionals.

THE FAIR DEBT COLLECTION PRACTICES ACT

The FDCPA, also known as Public Law 95-109, has been in effect since March 20, 1978, and since that time we feel it has worked well in achieving the purposes for which it was enacted.

ACA supported the Act when it was passed, and over the last seven years has worked diligently to insure that all association members, and collectors in general, comply with it. For example, in early 1978, ACA developed a manual on the FDCPA and used that manual as the basis for several seminars on FDCPA compliance that were conducted for association members and their employees. Over 24,000 copies of that manual, now in its third printing, have been distributed to collectors and credit grantors throughout the U.S. Our manual is based upon the law itself and the numerous interpretations of the FDCPA by the Federal Trade Commission and the courts, and has been called, by a spokesperson for the FTC, "the finest manual available anywhere on the Fair Debt collection Practices Act." ACA has also prepared an audiocassette training program on the FDCPA and our Code of Ethics and Operations requires all Association members to comply with the Act.

In 1982, ACA developed another, highly detailed manual on the FDCPA, containing information about the language and legislative intent of the Act, the more than 600 individual interpretations of its various sections that have been made by FTC staff attorneys, significant court decisions, and the 12 FTC consent orders that have been signed under the Act. This 172-page manual has been used in 56 seminars that ACA has conducted for members in 37 states and attended by more than 1,500 collection service owners, managers and employees. In addition to the owners and employees of debt collection firms, many credit grantors, government employees, and state regulatory officials have attended these seminars at the invitation of ACA members.

ACA's Executive Vice President John W. Johnson wrote a book for Prentice Hall, at the publisher's request, which outlines credit granting, billing, skiptracing and collection techniques for credit grantors. That book, published in January, 1984, refers repeatedly to Public Law 95-109 and urges readers, most of whom are credit grantors, to comply with this Federal law.

The Fair Debt Collection Practices Act has also been the subject of frequent articles in COLLECTOR magazine, ACA's monthly journal for members which is also read by many credit grantors. Sixty-five such articles have been published since the Act was passed in 1977.

From our experience, it is not only the collection industry that feels that the FDCPA is important. Many credit grantors, who are specifically exempt from the FDCPA pursuant to Section 803(6), nevertheless diligently abide by the provisions of that Act. We frequently receive inquiries from creditors asking how to comply with PL 95-109, and they often take advantage of the publications and seminars covering the Act that our association provides for members. For example, approximately 10% of the copies of ACA's manuals on the FDCPA which have been distributed were purchased by credit grantors. In addition, many creditors have written to the Federal Trade Commission posing questions about the FDCPA to make sure that they comply with it, even in cases where that compliance is not required by the Act. It's safe to say that there is a widespread feeling among everyone in the credit community that the Act applies to all of us.

Last year, ACA received two new national honors. In October, ACA received a plaque for its "outstanding voluntary self-regulation program" in the consumer debt collection industry at a Washington conference co-sponsored by the White House Office of Private Sector Initiatives and the American Society of Association Executives. For its efforts toward community improvement through voluntary programs, ACA also received a "C" Flag Presidential Citation at a White House ceremony in December.

When ACA decided to support the Fair Debt Collection Practices Act and work for its passage, we made a solid commitment to make it work. We think that ACA has fulfilled that commitment.

H.R. 237

In drafting the Fair Debt Collection Practices Act, this Committee recognized that abusive debt collection practices contribute to personal bankruptcies, marital instability, the loss of jobs and invasions of individual privacy, and there is no question that abusive debt collection practices result in consumer injury. From the standpoint of the consumer, however, whether the debt collector is an attorney or a non-attorney is inconsequential. If a consumer is injured as a result of abusive debt collection practices, it makes no difference what professional title the debt collector is operating under. Accordingly, the rules governing debt collection ought to apply evenly to the act of collecting debts, regardless of who is doing the collecting.

Section 803(6)(F) of the FDCPA, the attorney exemption, allows one class of third party collectors - lawyers - to collect debts outside the requirements of the Act. When the law was passed debt collection attorneys "acting on behalf of their clients" were exempted from compliance. Some lawyers and law firms have taken advantage of their exemption to set up what are, for all intents and purposes, collection agencies exempt from the FDCPA. They hire non-attorneys to carry on the same activities that employees of collection agencies do, including sending dunning letters, telephoning debtors, skiptracing, setting up payment plans and processing payments. Although many attorneys collect debts through legal process, many also collect debts through activities that do not involve the practice of law and do not require the specialized skills that are considered unique to attorneys.

H.R. 237, introduced by Chairman Frank Annunzio, the original sponsor of the FDCPA, would close this loophole by eliminating the attorney exemption. Attorneys who come under the definition of a debt collector in the Act (viz., "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another") would be covered by its scope and would have to comply with its provisions.

Congress has recognized the importance of the standards outlined by the FDCPA. The Debt Collection Act of 1982 requires private sector debt collectors collecting claims for federal agencies to comply with the FDCPA and all federal and state laws governing debt collection. ACA believes it is only reasonable that this requirement be applied consistently to all third parties who collect consumer accounts in the public and private sectors, whether they are collection agencies or law firms.

Representatives of a major national law firm, testifying in a hearing before a subcommittee of the U.S. Senate on May 25, 1983, estimated that there are 5,000 practicing attorneys in the United States who handle consumer collection accounts on a regular basis, or a number approximately equal to the total lay collection industry. (Exhibit 1, pg. 6) In addition, this law firm estimated that in 1982 it alone received 365,471 consumer accounts for collection, representing a total dollar value of more than $355 million. (Exhibit 1, pg. 2) This is roughly ten times the volume of collections handled by the average ACA member agency, as determined by a recent national survey. This law firm also testified that it filed about 30,000 collection lawsuits in 1982, which means that nearly 92% of the accounts handled that year did not involve legal action.

We expect that the deletion of the attorney exemption will meet with little opposition from attorneys who engage in debt collection. For example, this same law firm, in testimony before a subcommittee of the U.S. Senate on July 21, 1983, stated:

> As a law firm with an extensive portion of our practice dedicated to collecting delinquent consumer accounts, we are mindful at all times of the need to conduct ourselves in a manner consistent with the requirements of law dealing with consumer rights. We fully support . . . requiring any law firm performing collection services on behalf of the United States Government . . . to comply with the provisions of the Fair Debt Collection Practices Act. (Exhibit 2, pg. 3)

The FTC has stated that very few attorneys confine their practices exclusively to consumer debt collection. Consequently, although the potential for, and existence of, consumer debt collection abuses by attorneys may be great, the number of attorneys who would be directly affected by the deletion of the attorney exemption from the FDCPA is relatively small.

Some practices of attorney firms would violate the FDCPA.

There is evidence of the use of abusive, deceptive and unfair debt collection practices by some attorneys and law firms which would be prohibited under the FDCPA if engaged in by non-attorney collectors. Attached to this statement are some examples of this conduct, including the following:

a. Calls after 9 p.m. (Section 805(a)(1)) (Exhibit 3)

b. Calls to employer (Section 805(b)) (Exhibit 4)

c. Frequent calls to consumer (Section 806(5)) (Exhibits 4 and 5)

d. Disclosure of consumer's debt to third parties (Section 805(b)) (Exhibits 4 and 5)

e. Threats of legal action on small balance accounts where there is little likelihood that such action will be taken (Section 807(5)) (Exhibits 6, 7, 8, 9, 10, 11 and 12)

f. Simulating legal process (Sections 807(9) and 807(13)) (Exhibit 10)

g. Harassment and abuse (Section 806) (Exhibit 13)

h. Threatening the seizure, attachment and sale of property on accounts where there is little likelihood that such action will be taken. (Section 807(4)) (Exhibits 14, 15 and 16)

In addition, since attorneys' collection practices are not constrained by the Act, consumers contacted by attorney debt collectors lose their right to dispute the amount or validity of the debt which Congress afforded consumers under Section 809 of the FDCPA.

Two specific examples might help to illustrate some of this conduct.

A consumer complained to the FTC about the collection practices of an attorney, stating that she

> . . . received at least one call a day from this company. Most times it would involve a call in the daytime and a call at night. Each time it would be a different gentleman, each one not knowing what had been told the last one.
>
> At one point one of the gentleman asked that if I "meet with him in person . . ." that " . . . we could work something out . . .". He also stated that he hoped that my husband wasn't listening in on the conversation.
>
> Another day I had an uncle visiting my family for a couple of days and while I was out of the house he answered a call from this company and was given my whole history over the phone which he repeated to me when I returned. It was very embarrassing. (Exhibit 5)

A non-attorney collector engaging in this sort of conduct would clearly be in violation of the FDCPA, while an attorney would not. Yet there is no difference in the amount of injury suffered by the consumer as a result of this collection activity.

In another example, an attorney in the southeastern U.S. wrote to a consumer owing a $31.50 account and stated:

> Unless I hear from you within the next ten (10) days, we will be forced to file suit against you in the District Court of . . . County. The filing of suit will result in a judgment, which will allow my client to garnish your wages, garnish your bank account, and send the sheriff out to pick up any property that you own to have sold at auction (through personal property execution), and/or execute and levy upon your house and have it sold at auction. (Exhibit 14)

It is unlikely that this attorney routinely carries out these threats on small balance accounts, yet this attorney has sent form letters to other consumers on accounts under $100 containing similar language and also threatening to have the consumer's house sold at auction. (Exhibits 15 and 16)

Existing laws and procedures for protecting consumers from abusive debt collection practices by attorneys are inadequate.

Section 803(6)(F) of the FDCPA grants an exemption from that Act to "any attorney at law collecting a debt as an attorney on behalf of and in the name of a client." Presumably, an attorney collecting debts outside the scope of that exemption would be covered by the FDCPA.

However, the FTC which, in our judgment, has done an excellent job of attempting to clarify questions about the FDCPA, has had difficulty enforcing the FDCPA against attorneys in situations in which attorneys are not clearly exempted from the Act. The difficulty arises principally because under the existing language of the Act it is difficult, short of litigation, to make a distinction between those situations in which an attorney is covered by the Act and those in which an attorney is not.

In its Fourth Annual Report to Congress on the FDCPA issued on April 27, 1982, the FTC stated:

> Many attorneys active in (the debt collection) area appear to believe that the mere fact that they are licensed as attorneys exempts all of their collection activities, including that of any non-attorney debt collectors they employ, from the provisions of the Act. . . Because the precise limitations of (the attorney) exemption may be fully clarified only after litigation, the Commission believes that Congress should consider specifying the boundaries of this exemption in greater detail. (Exhibit 17, pgs. 10-11)

The Commission repeated this recommendation in its Fifth Annual Report to Congress on the FDCPA, filed on May 2, 1983, (Exhibit 18, pgs. 11-12) as well as its Sixth (Exhibit 19, pgs. 10-11) and Seventh (Exhibit 20, pgs. 11-12) Annual Reports, filed April 6, 1984 and March 27, 1985, respectively.

This confusion can easily be eliminated by regulating the practice of debt collection, rather than the individuals who collect the debts.

While the Federal Trade Commission has the authority under Section 5(a)(2) of the FTC Act to protect consumers from unscrupulous debt collection practices by attorneys, (Exhibit 21) Section 5 lacks the broader, clearly outlined protections for consumers granted by the FDCPA. In addition, Section 5 of the FTC Act lacks any civil liability provisions, leaving consumers powerless to bring actions against attorney debt collectors on their own behalf. (Exhibit 22)

The only practical alternative available to consumers for protection against abusive debt collection practices by attorneys is to complain to the local or state bar association. However, there is documented evidence that procedures for enforcing canons of ethics by state bar associations against attorneys engaging in debt collection abuses are inadequate to protect consumers. (Exhibit 23)

Chief Justice Warren E. Burger, quoting a report issued by Justice Tom Clark, then chairman of the American Bar Association's Committee on Disciplinary Enforcement by the Bar, before the Midyear Meeting of the ABA on February 12, 1984 stated:

> . . ."With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility. Disciplinary action is practically nonexistent in many jurisdictions, practices and procedures are antiquated; many disciplinary agencies have little power to take effective steps against malefactors."

Chief Justice Burger remarked in conclusion that while the Report "stimulated action by some State Bar Associations, any fair-minded examination of the whole picture today will reveal that what we have done falls short of what is needed."

Attorney firms compete unfairly with collectors due to their FDCPA exemption.

Advertising programs used by collection services to solicit clients, whether the services are operated by attorneys or non-attorneys, are quite similar to those employed by many other businesses. For example, attorney collectors often use yellow pages listings to advertise their services, listing their advertisements under both the "attorney" as well as the "collection agency" headings. An example of this practice can be found in Exhibit 24. Attorneys following this practice obviously want to be known as collection agencies - they want it known that a principal part of their business is the collection of accounts owed or asserted to be owed another.

Direct mail promotions are another popular advertising method. By analyzing the promotions of attorney collection operations, it is clear that some of these law firms are actually collection agencies, employing lay people as collectors and operating under the law firm name. Often, the procedures used - precollection letters and skiptracing - as well as fees charged by attorney collectors - a fee contingent upon accounts recovered - as outlined in these advertisements are similar to procedures used and fees charged by non-attorney collectors. (Exhibits 25, 26, 27, 28, 29 and 30)

ACA is concerned about advertisements used by some attorney collection firms which solicit clients by pointing out their exemption from the FDCPA and citing it as a reason why they can be "more effective" in their collection efforts than non-attorney collection agencies. (Exhibits 29, 30 and 31) For example, one attorney collection firm advertises:

> "Collection agencies are governed by the Fair Debt Collection Practices Act which requires that suit be filed in the county of the debtor's residence. As an attorney, I am exempt from this Act, allowing me to file suit where the debt was to be paid, i.e., the county of the creditor's place of business. This can save delays in filing suit, logistics problems in prosecuting the suit, and ultimate collection of the account. We do not have to refer your accounts to other counties which usually involves fee splitting and further delays and expenses, including travel (of attorney and witnesses) to other counties in the event of trial or other court hearings." (Exhibit 29)

In another example, the "advantages" of using an attorney collection firm are explained as being that:

> "Your member attorney is exempt from the requirements of the Fair Debt Collection Practices Act of 1978, you are therefore protected against judgments on counter claims by your debtor based on unfair collection practices." (Exhibit 30)

Is it reasonable to assume that attorneys who advertise their exemption from the FDCPA hope to convey to the public that their firm can violate the Act without fear of penalty? Such advertising may indeed give the impression that these law firms actually conduct activities which violate the FDCPA and that the benefit of this conduct is increased collections for their clients.

Clearly, the ability of attorneys to promote their collection services by pointing to the attorney exemption under the FDCPA has put non-attorney collectors at a considerable competitive disadvantage. In the interest of fairness as well as consumer protection, ACA believes that the FDCPA should be applied evenly to all persons who collect debts on behalf of others.

CONCLUSION

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present the thinking of the American Collectors

Association with regard to H.R. 237. We believe that the work you are doing and have done to protect American consumers is significant.

H.R. 237 is co-sponsored by 124 Members of Congress (72D, 52R) who represent 38 states, including twenty-one members of the House Banking, Finance and Urban Affairs Committee and nine members of the Consumer Affairs and Coinage Subcommittee. Fifty-one of the co-sponsors are attorneys themselves. (Exhibit 32)

This legislation also enjoys widespread support in the U.S. Senate. Last year, this provision was included in the Senate omnibus banking bill (S. 2851) which that body overwhelmingly adopted late in the session, but which did not pass the House.

S. 951, a companion to H.R. 237, was introduced by Senator Slade Gorton on April 18, 1985. In introducing this legislation, Senator Gorton, himself an attorney who served as the Attorney General of the State of Washington for eight years, stated:

> "The Fair Debt Collection Practices Act was enacted to protect consumers by curbing abusive practices by debt collectors. I can see no reason why such protection is any less necessary, simply because the debt collector happens to be an attorney or law firm. Indeed, I would hope that my own profession would provide a model for behavior in this area, but just in case it should not, we should have the protection of the Act to fall back upon."

ACA believes that H.R. 237, if enacted, will guarantee fair treatment of all consumers contacted by all third party debt collectors, regardless of the title or firm under which such collectors act. Consumers will have recourse against those lawyers who might harass and abuse them when collecting debts. The elimination of the attorney exemption will also create a better competitive environment for all debt collection services by insuring that all persons who collect debts will be operating by the same rules.

ACA respectfully urges your support of H.R. 237.

EXHIBITS TO ACCOMPANY

STATEMENT OF
AMERICAN COLLECTORS ASSOCIATION, INC.

CONCERNING H.R. 237

SUBCOMMITTEE ON CONSUMER AFFAIRS AND COINAGE
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 22, 1985

ACA EXHIBIT 1

Exhibit 1, pages 1-17

See transcript of Senate Hearing 98-298, pgs. 101-117.

S. Hrg. 98-298

OVERSIGHT OF FEDERAL DEBT COLLECTION

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY, NUCLEAR PROLIFERATION, AND
GOVERNMENT PROCESSES

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

MAY 25, 1983

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
[illegible] WASHINGTON : 1983

ACA EXHIBIT 2

Exhibit 21, pages 1-3

See transcript of Senate Hearing on S. 1356, July 21, 1983

(unpublished)

[redacted] ACA EXHIBIT 3

Fed Trade Comm
Wash. DC

FEDERAL TRADE COMMISSION
RECEIVED
FEB 6 1979
SECRETARY

Sir -

I wish to file a formal complaint against on [redacted]

He is an attorney (independent) acting on behalf of [redacted] on grounds of harassment. On 10/24/78 he violated Federal Law by calling after 9 PM badgering me on an overdue account.

His constant calls have caused medical problems for me and as a result I am a possible candidate for a stroke or heart attack due to elevated Blood pressure (which can be documented by my physician.) Your consideration will be appreciated.

Very Truly yours

[redacted]

ACA EXHIBIT 4

[redacted]
April 18, 19[illegible]

Federal Trade Commission
Dept Collection Practices
Washington, DC 20580

Dear Sir:

I am writing to request clarrification as to the manner in which the [redacted] (law firm) proceeded to collect a debt owed to the City of New York by me for parking violations.

On December 8th I was called at my job and informed that I owed $815 in parking violations and that if I did not pay my salary could be garnished or property (car) rep[redacted]aware at the time of such procedures or that this was being handled by a collection agency although I was aware that I had these summonses. I requested this information in writing. A week later I received a list of dates, fee and notice of $500 fine. I attemped for several weeks to negotiate a reasonable arrangement of payment to clear this matter. Countless calls from [redacted] were made to a relative's home and to my job. During that time I was out ill for several days but [redacted] persistently continued to call my job even after being informed that I would not be in due to illness. One call was made to the personnel office, where I am employed, by this collection agency informing the personnel office of my debt and that plans were being made to garnish my salary. The personnel office tried to inform me of this to my embarrassment.

Several more weeks of this telephone calling continued in which I continued to negotiate some manner of payments and informing the collection agency that I was unable to pay the total amount but was willing to pay the amount due in installements. I was led to believe that the liason persons with whom I spoke were relaying my inability to pay to their higherups and to the City Marshall.

On January 2nd I was called again at a relative's home asked to come to [redacted] office the next day that the marshall was willing to see me and make arrangements to settle this matter. I took the next day off from work and went to their Queens office. While I sat in a waiting room with my husband and child my car was hooked up to a pick-up truck and towed away at my expense. This was a total inconvenience since we were so far from home (70 miles).

I was too shocked and upset to debate the matter so we left immediately. I do not understand why such harsh measures were used. I was quite receptive to their cause and willing to cooperate. I am unable to comprehend why (after so much communicating that I was unable to pay $815 in full or even half of it due to many other financial obligations and the fact that I am the only one employed but willing to pay in installements) such measures were used.

In the end I had to pay over $1,000 plus a $50 to lawyers I had requested advise from but who were also unable to negotiate successfully with [redacted] on my behalf. The money used to regain possession of my car was borrowed and still remains unpaid.

I truly feel that my rights were violated and request your advise.

Sincerely,

[redacted]

CP

ACA EXHIBIT 5

March 16, 1979

Federal Trade Commission
Bureau of Consumer Protection
Washington, D.C.   20580

Re: [redacted] attorney firm
Collectors for N.Y.C. Parking Violations Bureau"

A number of weeks ago I was contacted by the above firm regarding the amount of $110.00 which they said I owed in past parking violations. At that time I sent $60.00 with a promise to pay the remaining $50.00 as soon as I could. I had explained to them that my husband had just lost his job, but if they would be patient I would be able to repay the rest.

From that point on I have received at least one call a day from this company. Most times it would involve a call in the daytime and a call at night. Each time it would be a different gentleman, each one not knowing what had been told the last one.

At one point one of the gentlemen asked that if I "meet with him in person..." that "...we could work something out...". He also stated that he hoped that my husband wasn't listening in on the conversation.

Another day I had an uncle visiting my family for a couple of days and while I was out of the house he answered a call from this company and was given my whole history over the phone which he repeated to me when I returned. It was very embarrassing.

I have every intention of repaying this money, but I have no intention of sitting still for this treatment. I hope something can be done to stop this situation.

Sincerel[redacted]

cc: [redacted]
attorney firm

ACA EXHIBIT 6

[redacted]

September 29, 1981

M & A-15089

[redacted]

RE: [redacted]
$48.00

Dear Sir:

I represent [redacted] in its claim against you in the sum of $ 48.00 . Failure to hear from you by return mail may result in suit being filed against you and such suit will be processed as expeditiously as possible. If you retain an attorney in this matter, which you, of course, are entitled to do, you will incur additional costs.

Any judgment obtained will be followed by a levy on your property and other assets including your bank account. To avoid such action being taken, it is imperative that you communicate with me by return mail.

Yours truly,

[redacted]

[redacted]

ACA EXHIBIT 7

[redacted]
Attorney - at - Law

2117 E. Merrick Road
Valley Stream N Y 11581

516-872-5752

02/09/83

FOR THE   YOU ORDERED FROM
BALANCE AS OF 10/25/82 IN THE AMOUNT OF $21.50
WE VIGOROUSLY URGE YOU TO PAY THIS IMMEDIATELY.

Your creditor has requested that legal action be commenced in order to satisfy your lawful debt to him, which is indicated above and which is still outstanding.

You are accordingly advised that unless payment is received by this office within ten (10) days from the date of this letter I will instruct my client, your creditor, to retain an attorney in your community to commence a law suit against you without further notice.

Such action would presumably result in a judgment being entered against you by the creditor, which may include court costs, interest and other disbursements, in addition to the amount presently due. In addition, if the judgment is entered, a property and/or income execution may be issued by the Sheriff's office in your County in order to effect collection of the judgment.

Payment of the amount indicated above will avoid the expense and inconvenience of a law suit for both my client as well as yourself. Please make your check or money order payable to the above mentioned creditor. In order to properly credit your account please return this letter. A return envelope is enclosed for your immediate use.

Very truly yours,

[redacted]

522-15125773 $21.50

ACA EXHIBIT 8

[redacted]
ATTORNEY AT LAW
2818 FIRST NATIONAL TOWER
LOUISVILLE, KENTUCKY 40202
(502) 585-5195

Mr [redacted]
[redacted]
ANN ARBOR MICHIGAN
48104

FINAL NOTICE ON RETURNED CHECK

This is your final notice of the returned check you have issued in the amount of $ 64.24 * to my client [redacted].

Please remit the full amount to my office within 10 days. If not received it could result in criminal or civil court actions being brought against you.

[redacted]
Attorney at Law

*Includes check charge for returned check by my client.

ACA EXHIBIT 9

[redacted]
ATTORNEY AT LAW
[illegible] UNION FEDERAL BUILDING
[illegible] N. PENNSYLVANIA [illegible]
INDIANAPOLIS, INDIANA [illegible]

Dear Member:

I have advised the [redacted] Club that you are in default in the payment of your account and that it is entitled to bring a law suit against you in the appropriate civil court in your community to collect the entire amount due, plus court costs, sheriff's fees where applicable, and possible interest.

Acting in accordance with my advice, the [redacted] Club, through appropriate procedures, has this month directed local trial lawyers throughout the United States to sue 15 members in default on their accounts. [redacted] has informed me that each month they will continue to sue members who are in default.

With this in mind, it would seem advisable for you to pay your overdue account without delay.

Very truly yours,

[redacted]

[redacted]

MS:PB/8

Enc: Bill

ACA EXHIBIT 10

ATTORNEYS	COMPLAINANTS
TO: [redacted]	FROM:
P.O. BOX 5828	Drs. [redacted] P.A.
BALTIMORE, MD. 21208	600 Reisterstown Road
PHONE: (301) NEW PHONE # 486-2888	Baltimore, Md. 21208

NOTICE TO FILE SUIT

5457

GENTLEMEN: IN ACCORDANCE WITH ARRANGEMENTS PREVIOUSLY MADE, YOU ARE HEREBY DIRECTED TO ENTER SUIT AGAINST THE FOLLOWING NAMED ACCOUNT TO EFFECT PAYMENT OF TREATMENT FEES THAT ARE PAST DUE.

Mrs. [redacted] P0315
[redacted]
Baltimore, Md. 21209

IN THE AMOUNT OF
$ 25.00
PLUS ACCRUED COSTS, FEES, INTEREST AND CHARGES

◄FOLD

FOR THE FOLLOWING TREATMENT:	FROM	TO	AMOUNT	
1. Endodontic consultations 6/6/78 & 6/7/78			25	00
2.				

PREVIOUS EFFORTS TO EFFECT PAYMENT HAVE BEEN AS FOLLOWS:

Bills and letters have been sent to the address above

LEGAL ACTION TO COMMENCE ON Nov. 3, 1978 UNLESS PAYMENT IS RECEIVED BEFORE THIS DATE. ACCRUED COSTS, FEES, INTEREST AND CHARGES TO BE ADDED TO JUDGEMENT.

COPY TO: Mrs. [redacted]
(Defendant)

WE REGRET THE NECESSITY OF THIS ACTION, BUT ALL OTHER EFFORTS HAVING FAILED, PROCEEDINGS WILL COMMENCE AUTOMATICALLY UNLESS PAYMENT IS RECEIVED
ON OR BEFORE 11/3/78

DOCTOR: [redacted]
SIGNED [redacted]
DATE OF AUTHORIZATION 10/12/78

RETURN THIS COPY WITH PAYMENT FOR PROPER CREDIT

MAIL ALL PAYMENTS DIRECTLY TO ATTORNEY

ACA EXHIBIT 11

NORSE & PARISH, P.C.
P O Box 210193
Dallas, Texas 75211-0193
[redacted]

AREA CODE 214
TELEPHONE 330-7175

May 10, 1985

GC 800

Mr. [redacted]
[redacted]
Euless, TX 76039

Re: COLUMBIA HOUSE

Index #GC-0185- 800 $32.07 Balance Due

Dear Mr. [redacted]

Evidently, as of this writing, you have chosen to ignore our recent polite request for payment of this long past due bill.

Ignoring the paying of this bill for these services leaves us with two recommendations we must now make to our client.

Based on the amount of your past due debt, we will have to suggest legal process in the District or County Court for recovery of principal sum plus all legal costs awarded and the inclusion of your name, address and telephone number in their computers to eliminate future charges. These Worthless Charges would also be open for review to your local Credit Reporting Service, if requested, where they would remain for a period of seven (7) years.

To eliminate the need for either of these drastic recommendations, it is necessary for your payment in full to reach our office in the next five (5) days along with the top portion of this letter.

Sincerely,

NORSE & PARISH, P. C.

W. A. Parish
WAP/dh

NCB
NATIONAL
COLLECTION
BUREAU

ACA EXHIBIT 12

Thomas Tedeschi
Attorney - at - Law

111-02 Jamaica Avenue
Richmond Hill, N.Y. 11418

TELEPHONE 51[illegible]-72-6752

5/20/85

[redacted]
17 [illegible]
[illegible] J 37[illegible]

RE: MAGAZINES ORDERED FROM AMERICAN FAMILY PUBLISHERS
BALANCE AS OF 6/15/85 IN THE AMOUNT OF 5.94
I STRONGLY URGE YOU TO PAY THIS BILL IMMEDIATELY.
I [illegible]

Your creditor has requested that legal action be commenced in order to satisfy your lawful debt to him, which is indicated above and which is still outstanding.

You are accordingly advised that unless payment is received by this office within five (5) days from the date of this letter I will instruct my client, your creditor, to retain an attorney to commence a law suit against you without further notice.

Such action would presumably result in a judgment being entered against you by the creditor, which may include court costs, interest and other disbursements, in addition to the amount presently due. In addition, if the judgment is entered, a property and/or income execution may be issued by the Sheriff's office in your County in order to effect collection of the judgment.

Payment of the amount indicated above will avoid the expense and inconvenience of a law suit for both my client as well as yourself. Please make your check or money order payable to the above mentioned creditor. In order to properly credit your account please return this letter. A return envelope is enclosed for your immediate use.

Very truly yours,

Thomas Tedeschi

Thomas Tedeschi

50[illegible]-50H8LC17P9[illegible] 5.94

ACA EXHIBIT 13

[redacted]
Orlando, Fla. 32807
July 24, 1979

30357

Dear Sirs,

This letter is regarding harrassment by a bill collector. It is a bill due the [redacted] for $571.00.

I tried to arrange a payment plan but the Lawyer demanded a post-dated check a month ahead. The bank closed the account and the check was returned. I'm trying to start my own business and have run up against problems, (no one to lend me venture capital). I have nothing at times to even eat, let alone pay bills. There is nothing I own at this writing they could even attach.

The letter to [redacted] has the details of what transpired. It can be backed up with other witnesses in regards to the phone calls, and my finacial situation.

They have already received a $25.00 check from me, but I don't know when I could send the rest.

Please advise me as to the actions that can or can not be taken in this case. I'm tired of being harrassed and threatened, especially when I was willing to pay what I could.

Sincerely

[redacted]

cc: [redacted]

ACA EXHIBIT 14

[redacted]

Attorneys at Law
108 A SOUTH SIDE SQUARE
HUNTSVILLE, ALABAMA 35801

AREA CODE 205
PHONE 536-0488
IF BUSY DIAL
536-0489

[redacted]
Lacey Springs, Alabama 35754

RE: Past due account with [redacted] of Huntsville, P.A.

Dear Mr. Hammer:

I have been retained by [redacted], P.A., in order to collect a past due account. You currently owe my client $31.50 . Listed below you will find the date of the treatment in question as well as the type of procedure that was performed:

10.01.74, Edith: Exploration and Drainage Perirectal Abscess $31.50

This account has been past due for sometime now. Unless I hear from you within the next ten (10) days, we will be forced to file suit against you in the District Court of Madison County. The filing of suit will result in a judgment, which will allow my client to garnish your wages, garnish your bank account, and send the sheriff out to pick up any property that you own to have sold at auction .

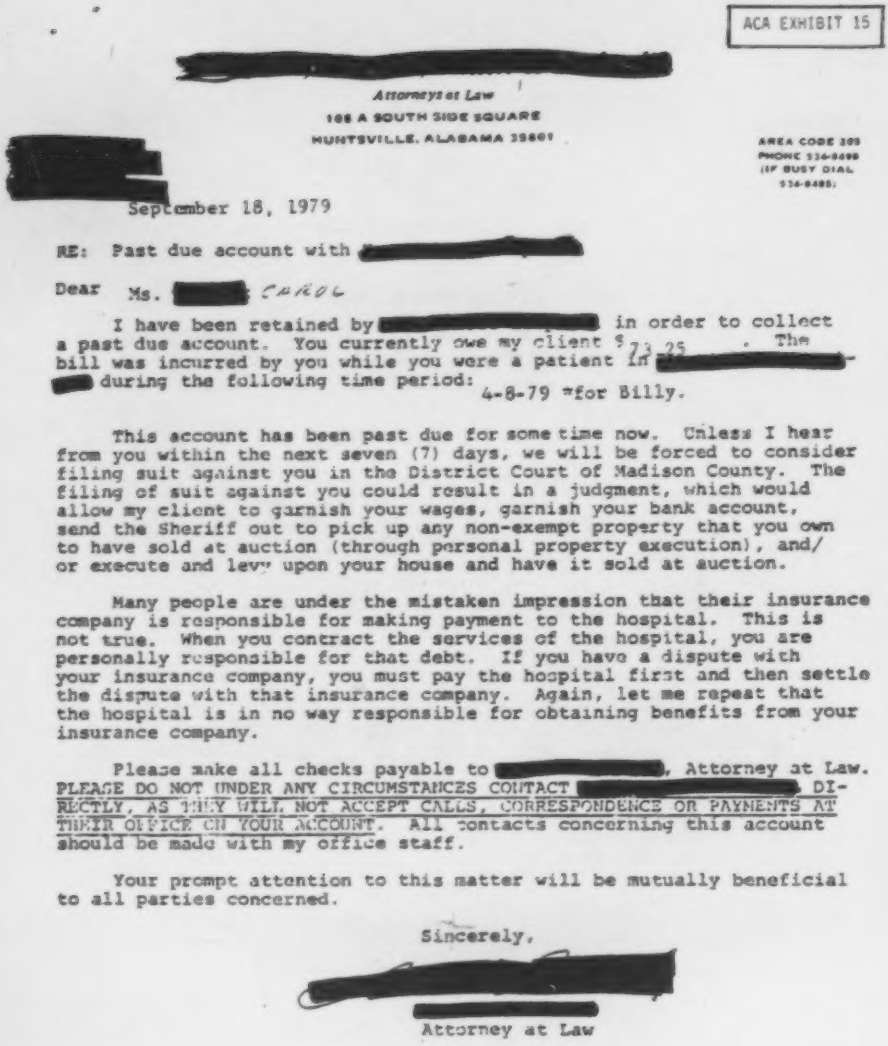
Many people are under the mistaken impression that their insurance company is responsible for paying their doctor. This is not true. When you contract the services of a physician, you are personally responsible for that debt. If you have a dispute with your insurance company, you must pay the physician and then settle the dispute with that insurance company. Again, let me repeat that the physician is in no way responsible for obtaining benefits from your insurance company.

Please make all checks payable to [redacted] Attorney at Law. PLEASE DO NOT UNDER ANY CIRCUMSTANCES CONTACT [redacted] OF HUNTSVILLE, P.A. DIRECTLY, AS THEY WILL NOT ACCEPT CALLS, CORRESPONDENCE OR PAYMENTS AT THEIR OFFICE! All contacts concerning this account should be made with my secretary.

Your prompt attention to this matter will be mutually beneficial to all parties concerned.

Sincerely,

[redacted]



ACA EXHIBIT 15

[redacted]
Attorneys at Law
108 A SOUTH SIDE SQUARE
HUNTSVILLE, ALABAMA 35801

AREA CODE 205
PHONE 534-8498
(IF BUSY DIAL
534-8485)

[redacted]

September 18, 1979

RE: Past due account with [redacted]

Dear Ms. [redacted] CAROL

I have been retained by [redacted] in order to collect a past due account. You currently owe my client $ 73.25 . The bill was incurred by you while you were a patient in [redacted]-[redacted] during the following time period: 4-8-79 *for Billy.

This account has been past due for some time now. Unless I hear from you within the next seven (7) days, we will be forced to consider filing suit against you in the District Court of Madison County. The filing of suit against you could result in a judgment, which would allow my client to garnish your wages, garnish your bank account, send the Sheriff out to pick up any non-exempt property that you own to have sold at auction (through personal property execution), and/or execute and levy upon your house and have it sold at auction.

Many people are under the mistaken impression that their insurance company is responsible for making payment to the hospital. This is not true. When you contract the services of the hospital, you are personally responsible for that debt. If you have a dispute with your insurance company, you must pay the hospital first and then settle the dispute with that insurance company. Again, let me repeat that the hospital is in no way responsible for obtaining benefits from your insurance company.

Please make all checks payable to [redacted], Attorney at Law. PLEASE DO NOT UNDER ANY CIRCUMSTANCES CONTACT [redacted] DIRECTLY, AS THEY WILL NOT ACCEPT CALLS, CORRESPONDENCE OR PAYMENTS AT THEIR OFFICE ON YOUR ACCOUNT. All contacts concerning this account should be made with my office staff.

Your prompt attention to this matter will be mutually beneficial to all parties concerned.

Sincerely,

[redacted]

[redacted]
Attorney at Law

ACA EXHIBIT 16

[redacted]
Attorneys at Law
108 A SOUTH SIDE SQUARE
HUNTSVILLE, ALABAMA 35801

AREA CODE 205
PHONE [illegible]
(IF BUSY DIAL
[illegible])

[redacted]

June 30, 1980

RE: Past due account with [redacted]

Dear [redacted]

I have been retained by [redacted] in order to collect a past due account. You currently owe my client $80.00 . The bill was incurred by you while you were a patient in [redacted] [redacted] during the following time period: 12-28-79 [redacted]

This account has been past due for some time now. Unless I hear from you within the next seven (7) days, we will be forced to consider filing suit against you in the District Court of Madison County. The filing of suit against you could result in a judgment, which would allow my client to garnish your wages, garnish your bank account, send the Sheriff out to pick up any non-exempt property that you own to have sold at auction (through personal property execution), and/or execute and levy upon your house and have it sold at auction.

Many people are under the mistaken impression that their insurance company is responsible for making payment to the hospital. This is not true. When you contract the services of the hospital, you are personally responsible for that debt. If you have a dispute with your insurance company, you must pay the hospital first and then settle the dispute with that insurance company. Again, let me repeat that the hospital is in no way responsible for obtaining benefits from your insurance company.

Please make all checks payable to [redacted], Attorney at Law. PLEASE DO NOT UNDER ANY CIRCUMSTANCES CONTACT [redacted] DIRECTLY, AS THEY WILL NOT ACCEPT CALLS, CORRESPONDENCE OR PAYMENTS AT THEIR OFFICE ON YOUR ACCOUNT. All contacts concerning this account should be made with my office staff.

Your prompt attention to this matter will be mutually beneficial to all parties concerned.

Sincerely,

[redacted]

[redacted]
Attorney at Law

ACA EXHIBIT 17

From: Fourth Annual Report to Congress
Pursuant to Section 815 of the
Fair Debt Collection Practices Act

Honorable Strom Thurmond
Honorable Thomas P. O'Neill, Jr.

identified as involving the Act. Investigation of those complaints revealed no violations. The OCC reports that few banks are subject to the Act and, among those that are, there appears to be a high degree of compliance. The OCC continues to provide all national banks with a copy of the Comptroller Handbook for Consumer Examinations which explains the Act's provisions. The OCC staff has also participated in numerous compliance seminars whose curricula include the Act's provisions.

OCC believes that the term "regularly," as used in section 1692a's definition of "debt collector," should be clarified to assist in determining who is a debt collector under the Act. Also, section 1692a(6)(G)(iii) provides an exemption for the collection of a debt "which was not in default at the time it was obtained." OCC believes that the Act should define the point in time at which a debt is considered to be in default.

STATE EXEMPTIONS

Pursuant to Section 817 of the Act, the Commission promulgated regulations which provide criteria and establish procedures whereby it may exempt from the Act any collection practices within any State if subject to substantially similar State requirements. These regulations have been codified at 16 C.F.R. 901. Although a few states have inquired about the procedures for obtaining exemptions, none has provided the information needed for the Commission to determine whether exemption should be granted.

LEGISLATIVE RECOMMENDATIONS

As indicated above, attorneys-at-law are becoming increasingly active in the debt collection area. Some attorneys engage in debt collection only incidentally for clients for whom they do other legal work. Other attorneys specialize in debt collection. Very few attorneys confine their practices exclusively to consumer debt collection. Many attorneys active in this area appear to believe that the mere fact that they are licensed as attorneys exempts all of their collection activities, including that of any non-attorney debt collectors they employ, from the provisions of the Act. The American Collectors Association has brought to the Commission's attention alleged representations by attorneys arguing that the creditor should hire an attorney, rather than a "debt collector," because the former are not bound by statutes such as the Fair Debt Collection Practices Act.

The Act does not contain a blanket exemption for attorneys; rather, the exemption is qualified, i.e., it applies to any attorney-at-law "...collecting a debt as an attorney on behalf of and in the name of a client."[6] Because the precise limitations of this exemption may be fully clarified only after litigation, the Commission believes that Congress should consider specifying the boundaries of this exemption in greater detail.

CONCLUSIONS

While full compliance with the Act has not yet been achieved, the Commission believes that a balanced administration and enforcement program, coupled with remedies designed to prevent future violations and redress consumer injuries is of extreme importance in accomplishing this goal. As such, the Commission will remain sensitive to the comments received from consumers and the industry alike, and make appropriate responses when necessary. The Commission will also continue to monitor and assemble information about the collection activities of creditors so that it can be made available to the Congress.

By direction of the Commission.

SIGNED & MAILED
James C. Miller III
Chairman

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[6] 15 U.S.C. §1692a(6)(F).

ACA EXHIBIT 18

From: Fifth Annual Report to Congress
Pursuant to Section 815 of the
Fair Debt Collection Practices Act

Honorable Strom Thurmond
Honorable Thomas P. O'Neill, Jr.

compliance have been reported by their examiners. In connection with self regulation efforts, the credit union industry developed a "Collection Code" which imposes collection standards that mirror the requirements of the Fair Debt Collection Practices Act. The agency reports that during the past year it received only one complaint which fell within the scope of the Fair Debt Collection Practices Act.

STATE EXEMPTIONS

Pursuant to Section 817 of the Act, the Commission promulgated regulations which provide criteria and establish procedures whereby it may exempt from the Act any collection practices within any State if subject to substantially similar State requirements. These regulations have been codified at 16 CFR 901. No exemptions have been granted and no State requested one during the past year.

LEGISLATIVE RECOMMENDATIONS

As indicated in last year's report, attorneys-at-law appear to be increasingly active in the debt collection area. Many attorneys engage in debt collection only incidentally for clients for whom they do other legal work. Other attorneys specialize in debt collection. Very few attorneys confine their practices exclusively to consumer debt collection. Many attorneys active in this area appear to believe that the mere fact that they are licensed as attorneys exempts all of any non-attorney debt collectors they employ from the provisions of the Act. The American Collectors Association has brought to the Commission's attention alleged representations by attorneys arguing that the creditor should hire an attorney, rather than a "debt collector," because, for an attorney, debt collection efforts are not limited by statutes such as the Fair Debt Collection Practices Act. In addition, in some instances attorneys appear to be using non-attorney collectors in such a way as to make the operation of their "law firm" virtually indistinguishable from the operation of a traditional debt collection agency.

The Act does not contain a blanket exemption for attorneys; rather, the exemption is qualified, i.e., it applies to any attorney-at-law "...collecting a debt as an attorney on behalf of and in the name of a client."[3] Because the precise limitations of this exemption may be fully clarified only after litigation, the Commission believes that Congress should consider specifying the boundaries of this exemption in greater detail.

CONCLUSIONS

Although full compliance with the Act has yet to be achieved, the Commission believes that an effective monitoring program and a balanced plan of formal as well as informal enforcement and the use of civil penalties where appropriate will do much to redress consumer injuries and motivate non-complying collectors to achieve compliance with the Fair Debt Collection Practices Act. Accordingly, the Commission will continue to consider comments of consumers and industry members and make appropriate response when necessary.

By direction of the Commission.

Emily H. Rock
Secretary

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[3] 15 U.S.C. §1692a(6)(F).

From: Sixth Annual Report to Congress
Pursuant to Section 815 of the
Fair Debt Collection Practices Act

ACA EXHIBIT 19

I. Section 803(6)(F)

Only persons who qualify as debt collectors under the definition provided in Section 803(6) of the Act are subject to the Act's requirements. This section generally defines debt collectors as those who regularly collect obligations owed to others. Section 803(6)(F) specifically exempts from the Act's coverage "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client."

In the Commission's view, this section does not provide a blanket exemption for attorneys. During the past year, the Commission accepted a consent judgment in United States v. Shaffner, a case involving an attorney-owned debt collection business. The Commission statement issued on June 28, 1983, in conjunction with the settlement of this case makes it clear that the Commission views traditional debt collection businesses as subject to the Act regardless of whether they are owned by an attorney and/or held out to the public as a law firm.

Many attorneys, however, engage in debt collection only incidentally for clients for whom they regularly provide professional legal services. The Commission believes that such attorneys presently are and should continue to be exempt from the Act's requirements. As noted in Commission testimony before Congress earlier this year, the Act imposes numerous affirmative requirements that were designed to address the specialized operations of a debt collection business. These requirements would be inappropriate and unduly burdensome if imposed upon attorneys outside that business who, when providing legal services, occasionally assist in the collection of their clients' outstanding accounts. Moreover, there is little evidence that such attorneys regularly engage in the kind of debt collection practices that the Act was designed to prevent.

As previous annual reports to Congress have noted, attorneys have become increasingly active in the debt collection area in recent years. Thus, between the traditional debt collection business and the provision of legal services, there exists a substantial middle ground. Attorneys whose activities occupy this middle ground may be understandably confused with respect to the applicability of the Act, since the language of Section 803(6)(F) provides little guidance.[3] The Commission issued the

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[3] Some attorneys apparently believe that they are automatically exempt from the Act. For example, the American Collectors Association has alleged that some attorneys attempt to persuade creditors to hire attorneys rather than debt collectors on the (Footnote Continued)

Shaffner statement last year in an effort to clarify its enforcement position with respect to the exemption. Nonetheless, considerable uncertainty continues to exist as to its meaning. Only Congress can fully delineate the scope of the exemption. The Commission urges, therefore, that Congress address this issue and establish appropriate guidelines. The Commission's views on the attorney-at-law exemption are set forth in the Shaffner statement, which is appended to this report.

II. Section 807(11)

Section 807 of the Act prohibits collectors from making false or misleading representations in connection with the collection of a debt. This section sets forth, without limitation, examples of violative conduct. Section 807(11) specifically provides that it is a violation to fail "to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose." Several courts have held that this section requires a collector to include this two-part disclosure in each oral or written communication with the indebted consumer, as well as with other third parties whom the collector may lawfully contact.[4]

The Commission disagrees with this interpretation of the Act and believes that the language of Section 807(11) should be reconsidered in light of its underlying purpose. Section 807 is intended to prevent deception by the collector in the debt collection process. Thus, the Commission has consistently taken the position in informal staff interpretations that, with respect to the consumer, there is little reason to require collectors to convey the second disclosure, *i.e.*, the use of information reassurance. When a collector has contacted a consumer and has clearly disclosed that he is seeking payment of a debt, the intended use of any information the collector seeks should be

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premise that attorneys' collection practices, unlike those of debt collectors, are not constrained by the Act. Although this does not accurately reflect the Commission's enforcement position, such representations may put non-attorney-owned collection businesses at a considerable competitive disadvantage.

[4] *See*, *e.g.*, *Beaulieu v. American National Educational Corporation*, Memorandum and Order (D. Neb. January 22, 1981); *Case v. Credit Bureau, Inc. of Georgia*, Opinion and Order (D. Or. January 10, 1983).

ACA EXHIBIT 20

From: Seventh Annual Report to Congress
Pursuant to Section 815 of the
Fair Debt Collection Practices Act

I. Section 803(6)(F)

The Act's requirements apply only to persons who qualify as debt collectors under the definition provided in Section 803(6) of the Act, which generally includes persons who regularly collect obligations owed to others. Section 803(6)(F) specifically exempts "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client" from the Act's coverage.

As we have stated in previous annual reports, the Commission does not view this section as providing a blanket exemption for attorneys. The Commission's position, as set out in its Shaffner statement of June 28, 1983,[5] is that traditional debt collection businesses are subject to the Act, regardless of whether they are owned by an attorney or publicly promote themselves as a law firm. However, in the Commission's view, those attorneys who engage in debt collection incidentally on behalf of clients for whom they regularly provide professional legal services are, and should remain, exempt from the Act's provisions. The Act's numerous affirmative requirements, designed to address the particularities of the debt collection business, would be inappropriate and unnecessarily burdensome if imposed upon attorneys who occasionally assist their clients in the collection of outstanding accounts. Furthermore, there is not a great deal of evidence suggesting that attorneys regularly engage in the type of debt collection practices that the Act was designed to prevent.

However, the number of attorneys whose collection activity falls somewhere between that of a traditional debt collection business and the business of providing legal services continues to grow. Attorneys whose collection activities occupy this middle ground may be uncertain of the Act's applicability to their situations.[6] Although the Commission's Shaffner statement, referred to earlier, clarifies our enforcement position with respect to the exemption, uncertainty continues to exist. Only Congress can clarify and fully delineate the scope of the exemption. Therefore, the Commission again recommends that Congress address this issue by establishing appropriate legislative guidelines.

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[5] This statement was issued in conjunction with the settlement of a Commission case against a law firm for violations of the Act by and through certain of its non-attorney employees. FTC v. Milton Shaffner, 626 F.2d 36 (7th Cir. 1980).

[6] Some attorneys apparently believe they are automatically exempt from the Act. For example, the American Collectors Association alleges that some attorneys attempt to persuade creditors to hire attorneys rather than debt collectors on the premise that attorneys' collection practices, unlike those of debt collectors, are not constrained by the Act. Although this does not accurately reflect the Commission's enforcement position, such representations may put non-attorney-owned collection businesses at a considerable competitive disadvantage.

II. Section 807(11)

Section 807 of the Act prohibits debt collectors from making false or misleading representations in connection with the collection of a debt, and sets forth, without limitation, examples of violative conduct. Section 807(11) requires a debt collector "to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose." Last year we reported that several courts have interpreted this section literally, requiring a collector to include this two-part disclosure in each oral and written communication with the indebted consumer, as well as with other third parties whom the collector may lawfully contact.[7]

In last year's report, we also indicated that the Commission disagrees with this interpretation, believing that the language of Section 807(11) should be considered in light of its underlying purpose. Section 807 as a whole is intended to prevent deception by the collector in the course of the collection process. In its informal staff interpretations, staff has consistently argued that, with respect to the consumer, there is little reason to require collectors to convey the second part of this disclosure regarding the intended use of any information the collector obtains. Once a collector contacts a consumer and discloses that he is seeking payment of a debt, the intended use of any information the collector seeks should be apparent to the consumer. In addition, staff believes there is little purpose in requiring collectors to reiterate the first part of the disclosure subsequent to that given in the initial contact with the consumer.[8] Given that the

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[7] See e.g. Beaulieu v. American National Educational Corporation, Memorandum and Order (D. Neb. January 22, 1981); Case v. Credit Bureau, Inc. of Georgia, Opinion and Order (D. Or. January 10, 1983.)

[8] Section 809 of the Act requires the collector to provide the consumer with a written notice that includes, among other things, the amount of the debt and the name of the creditor to whom the debt is owed. This notice must be provided within five days of the collector's initial contact with the consumer. Thus, a collector who complies with this section necessarily provides the information that the first part of Section 807(11) requires.

ACA EXHIBIT 21

["Antitrust Acts"]

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; also sections 73 to 77, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914. [September 26, 1914, Chap. 311, Sec. 4, 38 Stat. 719; October 15, 1914, Chap. 323, Sec. 1, 38 Stat. 730; March 21, 1938, Chap. 49, Sec. 2, 52 Stat. 111; 15 U. S. Code, Sec. 44.]

1938 Amendment.—The Wheeler-Lea Act of March 21, 1938, Public Law 447, approved March 21, 1938, amended the fifth paragraph of Section 4 by including the Clayton Act in the definition. Prior to the amendment, this definition read as follows:

"'Antitrust Acts' means the Act entitled 'an Act to protect trade and commerce against unlawful restraints and monopolies,'" approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an Act entitled 'an Act to reduce taxation, to provide revenue for the government, and for other purposes,' approved [of?] August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled 'an Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four,' entitled 'an Act to reduce taxation, to provide revenue for the government, and for other purposes,' approved February twelfth, nineteen hundred and thirteen."

[¶ 25,245] [UNFAIR METHODS OF COMPETITION AND UNFAIR AND DECEPTIVE ACTS AND PRACTICES]

Sec. 5. (a) (1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

[FTC Jurisdiction]

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 18(f)(3), common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

[Trade or Commerce with Foreign Nations]

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States. [September 26, 1914, Chap. 311, Sec. 5, 38 Stat. 719; February 13, 1925, Chap. 229, Sec. 2, 43 Stat. 939; March 21, 1938, Chap. 49, Sec. 3, 52 Stat. 111; June 23, 1938, Chap. 601, Sec. 1107(f), 52 Stat. 1028; July 14, 1952, Chap. 745; Sec. 2, 66 Stat. 631; August 23, 1958, Public Law 85-726, Sec. 1411, 72 Stat. 809; September 2, 1958, Public Law 85-909, Sec. 3; January 4, 1975, Public Law 93-637, Sec. 201(a), 88 Stat. 2193;

ACA EXHIBIT 22

PRIVATE RIGHT OF ACTION

Section 5 of the Federal Trade Commission Act as amended in 1938 does not give to a private person injured a right of action for damages. Atlanta Brick Co. v. O'Neal (DC Tex. 1942).

A similar conclusion was reached in L'Aiglon Apparel, Inc. v. Lana Lobell, Inc. (DC Pa. 1953), 118 F. Supp. 251, where plaintiff pleaded the Laham Trade-Mark Act and the Federal Trade Commission Act. Reversed on another point (CA-3; 1954) 214 F. 2d 649.

Source: Trade Regulation Reports, 1983.

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ACA EXHIBIT 23

QUESTION BEFORE THE BAR:

Is Legal Profession Guilty Of Failing To Police Itself?

UNION APR 26 1981

First of four articles

By JON STANDEFER
Staff Writer, The San Diego Union

Item: A dentist pays a lawyer $1,500 to represent his son, who was arrested on a drug charge. For several months, the lawyer assures the worried father that he is negotiating with the district attorney's office and that "these things take time." The dentist eventually learns, from a police officer friend, that his son's case was dismissed the morning after his arrest. A-1

Item: A woman pays $500 to retain an attorney to appeal her son's criminal conviction. Because she did not pay the balance of his fee within 60 days, the lawyer did not file notice of appeal. An appeals court [redacted] failure on the part of the attorney."

Item: An assistant U.S. attorney spends the night with a woman who was to be his key witness [redacted] trial involving [redacted] his indiscretion is learned in the office, the witness is sent home without testifying, her credibility vulnerable to [redacted] jury and dismissed charges.

Item: A retired schoolteacher pays a lawyer $500 to represent her son on a first-offense burglary charge. The lawyer [redacted] for another $2,000 in cash, [redacted] tee that her son will receive probation. The woman gives him all the cash she has: the $1,500 that she saved toward her own funeral expenses. Her son [redacted] jail.

• • •

These four cases occurred in recent years in San Diego. Despite action that was illegal or unethical, none of the attorneys [redacted] punished for misconduct.

They are not exceptions. A six-month review of dozens of similar examples of misconduct, ranging from outright theft of client funds to simple neglect, leaves the unavoidable conclusion that California lawyers seldom are held accountable for their misdeeds. The review [redacted]

— Lawyers rarely report misconduct by their colleagues, despite the moral duty required by their professional code of conduct.

— More than 80 percent of the complaints filed against lawyers are never investigated by California State Bar Association disciplinary authorities, according to [redacted]

— Of complaints that are investigated, only one in [redacted] leads to some form of disciplinary action.

— That disciplinary [redacted] harsh. More than half of the attorneys disciplined in 1979, the last year with complete statistics, received only letters of reprimand.

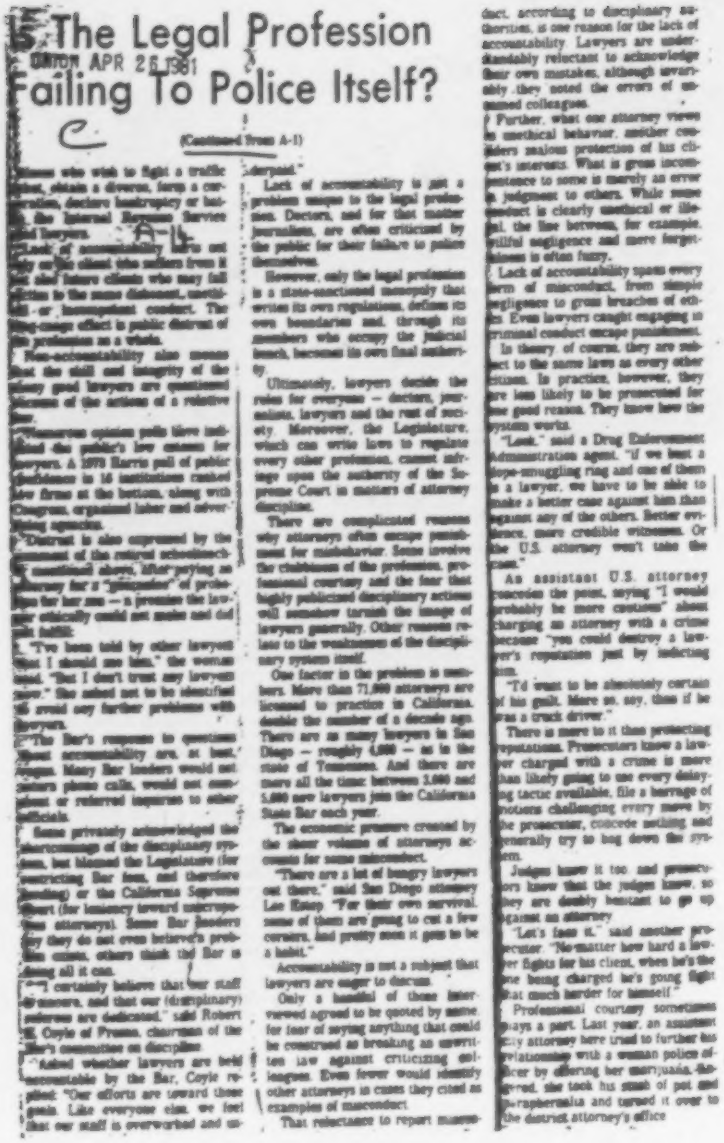
— Disbarment — the severest form of punishment — occurs less and less frequently in proportion to the numbers of lawyers and the numbers of complaints filed against them.

In 1979, the State Bar recommended the disbarment of nine lawyers, fewer than in each of the three preceding years. Only eight lawyers were disbarred 10 years earlier, when there were half the number of lawyers there are today. Disbarred attorneys can be reinstated after three years.

As the legal profession becomes ever more important, its flaws have greater impact. The complexities of new laws and governmental regulations increasingly require lawyers to explain and deal with them.

Neighborly disputes once settled in a back yard now are taken into court.

(Continued on A-14, Col. 1)



Is The Legal Profession Failing To Police Itself?

UNION APR 26 1981

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(Continued from A-1)

Those who wish to fight a traffic ticket, obtain a divorce, form a corporation, declare bankruptcy or battle the Internal Revenue Service need lawyers.

A-16

Lack of accountability hurts not only the client who suffers from it but also future clients who may fall victim to the same dishonest, unethical or incompetent conduct. The long-range effect is public distrust of the profession as a whole.

Non-accountability also means that the skill and integrity of the many good lawyers are questioned because of the actions of a relative few.

Numerous opinion polls have indicated the public's low esteem for lawyers. A 1978 Harris poll of public confidence in 16 institutions ranked law firms at the bottom, along with Congress, organized labor and advertising agencies.

Distrust is also expressed by the comment of the retired schoolteacher mentioned above. After paying an attorney for a "guarantee" of probation for her son — a promise the lawyer ethically could not make and did not fulfill:

"I've been told by other lawyers that I should sue him," the woman said. "But I don't trust any lawyers now." She asked not to be identified to avoid any further problems with lawyers.

The Bar's responses to questions about accountability are, at best, vague. Many Bar leaders would not return phone calls, would not comment or referred inquiries to other officials.

Some privately acknowledged the shortcomings of the disciplinary system, but blamed the Legislature (for restricting Bar fees, and therefore funding) or the California Supreme Court (for leniency toward unscrupulous attorneys). Some Bar leaders say they do not even believe a problem exists, others think the Bar is doing all it can.

"I certainly believe that our staff is sincere, and that our (disciplinary) referees are dedicated," said Robert M. Coyle of Fresno, chairman of the Bar's committee on discipline.

Asked whether lawyers are held accountable by the Bar, Coyle replied: "Our efforts are toward those goals. Like everyone else, we feel that our staff is overworked and understaffed."

Lack of accountability is not a problem unique to the legal profession. Doctors, and for that matter journalists, are often criticized by the public for their failure to police themselves.

However, only the legal profession is a state-sanctioned monopoly that writes its own regulations, defines its own boundaries and, through its members who occupy the judicial bench, becomes its own final authority.

Ultimately, lawyers decide the rules for everyone — doctors, journalists, lawyers and the rest of society. Moreover, the Legislature, which can write laws to regulate every other profession, cannot infringe upon the authority of the Supreme Court in matters of attorney discipline.

There are complicated reasons why attorneys often escape punishment for misbehavior. Some involve the clubbiness of the profession, professional courtesy and the fear that highly publicized disciplinary actions will somehow tarnish the image of lawyers generally. Other reasons relate to the weaknesses of the disciplinary system itself.

One factor in the problem is numbers. More than 71,000 attorneys are licensed to practice in California, double the number of a decade ago. There are as many lawyers in San Diego — roughly 4,000 — as in the state of Tennessee. And there are more all the time: between 3,000 and 5,000 new lawyers join the California State Bar each year.

The economic pressure created by the sheer volume of attorneys accounts for some misconduct.

"There are a lot of hungry lawyers out there," said San Diego attorney Lee Estep. "For their own survival, some of them are going to cut a few corners, and pretty soon it gets to be a habit."

Accountability is not a subject that lawyers are eager to discuss.

Only a handful of those interviewed agreed to be quoted by name, for fear of saying anything that could be construed as breaking an unwritten law against criticizing colleagues. Even fewer would identify other attorneys in cases they cited as examples of misconduct.

That reluctance to report misconduct, according to disciplinary authorities, is one reason for the lack of accountability. Lawyers are understandably reluctant to acknowledge their own mistakes, although invariably they noted the errors of unnamed colleagues.

Further, what one attorney views as unethical behavior, another considers zealous protection of his client's interests. What is gross incompetence to some is merely an error in judgment to others. While some conduct is clearly unethical or illegal, the line between, for example, willful negligence and mere forgetfulness is often fuzzy.

Lack of accountability spans every form of misconduct, from simple negligence to gross breaches of ethics. Even lawyers caught engaging in criminal conduct escape punishment.

In theory, of course, they are subject to the same laws as every other citizen. In practice, however, they are less likely to be prosecuted for one good reason. They know how the system works.

"Look," said a Drug Enforcement Administration agent. "If we bust a dope-smuggling ring and one of them is a lawyer, we have to be able to make a better case against him than against any of the others. Better evidence, more credible witnesses. Or the U.S. attorney won't take the case."

An assistant U.S. attorney concedes the point, saying "I would probably be more cautious" about charging an attorney with a crime because "you could destroy a lawyer's reputation just by indicting him.

"I'd want to be absolutely certain of his guilt. More so, say, than if he was a truck driver."

There is more to it than protecting reputations. Prosecutors know a lawyer charged with a crime is more than likely going to use every delaying tactic available, file a barrage of motions challenging every move by the prosecutor, concede nothing and generally try to bog down the system.

Judges know it too, and prosecutors know that the judges know, so they are doubly hesitant to go up against an attorney.

"Let's face it," said another prosecutor. "No matter how hard a lawyer fights for his client, when he's the one being charged he's going fight that much harder for himself."

Professional courtesy sometimes plays a part. Last year, an assistant city attorney here tried to further his relationship with a woman police officer by offering her marijuana. Angered, she took his stash of pot and paraphernalia and turned it over to the district attorney's office

The San Diego Union/Joe Holly

Ann Parode

The district attorney's office decided to let the city attorney's office handle the matter. No charges were filed and no Bar discipline resulted.

Lawyers do get prosecuted, of course. More than two dozen have been prosecuted by the San Diego district attorney's office in the last five years, including: former County Bar President Jack McCabe, convicted of receiving stolen property; former deputy district attorney L. Forrest Price, acquitted of falsifying evidence; former Democratic Party chairman Steve Gillis, against whom mail-fraud charges are pending.

Criminal charges do not necessarily result in disciplinary action. Of 21 recent prosecutions of attorneys in San Diego County, four resulted in no discipline by the State Bar. Four cases are pending.

When a lawyer is acquitted in a criminal case, he or she usually escapes disciplinary action even if his or her conduct violated professional standards.

Price, for instance, acknowledged making changes in a taxi driver's log book, but was acquitted of charges that he falsified evidence in a 1977 murder case he was prosecuting. He was fired by District Attorney Edwin Miller, and the firing was upheld after a lengthy series of Civil Service hearings. He was not publicly disciplined by the State Bar.

Even criminal convictions do not guarantee disciplinary action. Oceanside attorney James B. Burns, for example, pleaded guilty in 1978 to a misdemeanor charge of solicitation of prostitution after he accepted sexual favors from a prostitute-client in lieu of legal fees. The State Bar decided that the offense did not involve "moral turpitude" and Burns was not disciplined.

The State Bar is central to the problem of lawyer accountability. Local bar associations, such as the San Diego County Bar Association, are voluntary and cannot impose discipline.

Only the California Supreme Court may order an attorney suspended or disbarred, almost always upon the recommendation by the State Bar Disciplinary Board. The responsibility for investigating complaints and recommending discipline, therefore, falls in large measure upon the State Bar.

Many lawyers feel that the Bar is less than aggressive in the discipline area.

"The Bar is a very poorly run organization," said Ann Parode, vice president of the San Diego County Bar Association. "It's just a great big bureaucracy. A lot of lawyers are very frustrated by it."

Parode believes that this disenchantment helps explain why 70 percent of San Diego attorneys who responded to a recent poll answered yes to the question: "Do you feel that the (county) Bar Association should increase its roll in attorney discipline and ethics?"

Bar officials say they investigate every case of possible attorney misconduct that comes to their attention. Since disciplinary investigations are secret, there is no way for the public (or even lawyers) to be sure which cases are not investigated, and why. What is certain is that not all cases, even sensational ones, receive Bar attention.

In 1972, a radical Bay Area group planned and carried out the ambush of a state vehicle transporting a prisoner at the Chino Institution for Men. The prisoner escaped, one security guard escorting him was murdered and a second guard wounded.

Several of those involved were later tried and convicted of murder and attempted murder. In 1975, a Court of Appeals upheld the convictions. The unpublished opinion includes this passage:

"Finally, Beaty (the prisoner) wrote up some detailed plans for the escape which were . . . smuggled out of Chino by Alex Landon, a San Diego attorney, who was also active in the prisoners' rights movement. Nothing happened to these plans so Beaty wrote up another set which were also smuggled out by Landon."

Landon denies being involved in the escape plot, and he was not charged in the case. However, direct result of the allegations, Department of Corrections has barred Landon from setting foot inside any state prison in California — a ban he has never challenged in court.

The point here is that, according to Landon, he was never questioned by Bar authorities about the allegations.

The secrecy with which the Bar conducts investigations leaves its thoroughness open to question. Only when an attorney is found guilty of misconduct and is publicly disciplined — with a letter of reprimand, suspension or disbarment — is the case open for scrutiny. Otherwise, no information about a case is released.

When even such presumably credible persons as judges and prosecutors make complaints that result in no action, a "Catch-22" situation arises. Bar officials say they cannot investigate unless a complaint is filed — law enforcement authorities, lawyers and clients say they do not report misconduct because they do not believe the Bar will pursue it. And reports that are made cannot be located later.

Janet Kintner is a San Diego Municipal Court judge who caught an attorney lying in sworn testimony. She wrote a letter to the State Bar, and a Bar investigator interviewed her.

"I kept looking to see his name come up on the list of suspensions and disbarments," said Kintner — who will not identify the attorney. "It never did, and he's still around the courthouse, so I assume nothing happened."

Lily Barry, chief trial counsel of the State Bar Court, said she has no record of any complaint filed by Kintner.

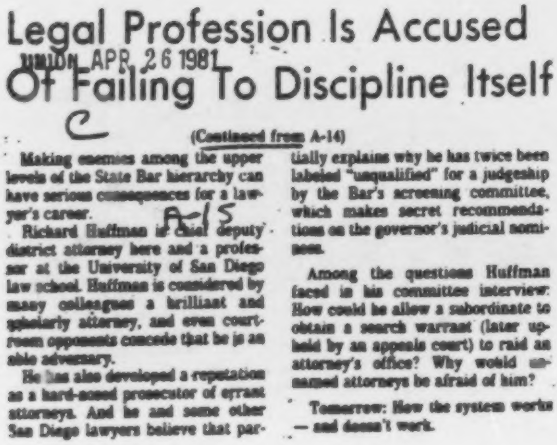
Similarly, the retired schoolteacher who felt she had been cheated by her son's attorney went to the district attorney to complain, and also filed a complaint with the Bar. A district attorney's investigator said he believed her story — but did not have enough evidence for a prosecutable criminal case.

The schoolteacher says she got a form letter from the Bar saying she did not have a valid complaint. Bar officials cannot find a record of that complaint either.

Another reason why lawyers fail to report misconduct is fear of retaliation.

Deputy district attorney Alan Fenton said: "Lawyers are afraid to blow the whistle because they're afraid that they might make a mistake someday and they don't want anybody coming down on them."

(Continued on A-15, Col. 1)



Legal Profession Is Accused Of Failing To Discipline Itself

UNION APR 26 1981

C

(Continued from A-14)

A-15

Making enemies among the upper levels of the State Bar hierarchy can have serious consequences for a lawyer's career.

Richard Huffman is chief deputy district attorney here and a professor at the University of San Diego law school. Huffman is considered by many colleagues a brilliant and scholarly attorney, and even courtroom opponents concede that he is an able adversary.

He has also developed a reputation as a hard-nosed prosecutor of errant attorneys. And he and some other San Diego lawyers believe that partially explains why he has twice been labeled "unqualified" for a judgeship by the Bar's screening committee, which makes secret recommendations on the governor's judicial nominees.

Among the questions Huffman faced in his committee interview: How could he allow a subordinate to obtain a search warrant (later upheld by an appeals court) to raid an attorney's office? Why would unnamed attorneys be afraid of him?

Tomorrow: How the system works — and doesn't work.

State Bar Meting Out Fewer — And Lighter — Penalties

UNION APR 27 1981

Second in a series

By JON STANDEFER

Staff Writer, The San Diego Union

C

California Supreme Court Justice Frank Richardson, like many lawyers and judges, believes "we're getting tougher on attorneys," but statistics do not bear him out.

As a seven-year member of the court that sits in final judgment on matters of attorney discipline, Richardson was surprised to learn that, if anything, discipline is becoming less harsh and less frequent: A1

— The number of attorneys disbarred each year has remained about the same for the past decade, although the number of lawyers practicing and the number of complaints filed against them has doubled.

In 1969, when there were 30,000 lawyers, 3,183 complaints were filed; eight lawyers were disbarred. In 1979 (the last year of complete statistics), there were about 70,000 lawyers, 4,315 complaints and nine recommendations of disbarment. Last year, 11 lawyers were disbarred.

— There were 75 public disciplinary actions last year, 11 fewer than in 1979 and seven fewer than in 1977.

— Fifty attorneys were suspended last year as the result of disciplinary investigations. In 45 of the 50 cases, however, the suspension was stayed and the attorney was placed on probation for most or all of the period of suspension. In 20 cases, the suspended attorney was not suspended at all; in another 20 cases, the period of actual suspension averaged less than three months.

Statistics do not, of course, tell the whole story. That is better told by a review of 1980 disciplinary actions, provided by the State Bar's communications office. Among them:

(Continued on A-6, Col. 4)

AND LESS HARSH

UNION APR 27 1981

Attorney Punishment Less Frequent

C

(Continued from A-1)

— Los Angeles attorney David Clarence Marcus was disbarred last year for willfully failing to perform services for two clients, and for refusing to return his clients' documents and fees that he had not earned. A6

"Marcus had previously been disciplined for 12 similar acts or courses of professional misconduct, and he was under suspension immediately prior to his disbarment," said a bar news release.

— A West Los Angeles lawyer, Marvin Osburn Jr., was retained in a probate case that began in 1966. According to the bar, Osburn failed to complete the case and "refused to file required documents despite letters he received in both 1975 and 1977 from two presiding judges asking him to take take action on the estate."

Osburn's punishment: 30 days suspension "or until he furnishes a doctor's report certifying that he is mentally and physically competent to carry out the duties of a lawyer."

— San Francisco lawyer William A. Ogata took a medical malpractice case while he was already on suspension, failed to provide reports to another attorney, failed to appear at a court hearing (which resulted in the case being dismissed) and failed to protect his client's interest. Then, while under investigation by the State Bar, "made false representations to an investigation officer and presented fabricated documents and continued to assert their authenticity after learning from his office staff of their bogus nature."

Ogata received a six-month suspension.

— San Pedro attorney Don Alan Borg was placed on probation for three years, with no actual suspension, although he misled his client and others about the status of one case and in three other cases did not perform the services for which he was hired — "in one case knowingly allowing the statute of limitations on his client's case to expire."

Bar officials and many judges, including some California Supreme Court justices, say that the harshest punishment is given those lawyers caught stealing or otherwise misusing client trust funds. A review of recent cases, however, indicates otherwise.

— Of 41 lawyers suspended between November 1979 and January 1981, 28 cases involved the misappropriation, commingling or other misuse of client trust funds.

— In only four cases was the attorney suspended for as long as one year. The other 24 cases resulted in suspensions averaging less than two months.

— [illegible]

Only last month, the San Diego district attorney's office filed criminal charges against attorney Leona M. Pfeifer for fraudulently misappropriating a client's funds.

The investigation began after former client Kathy Lee filed a complaint. Lee said about $11,000 she received from an out-of-court settlement following an auto accident in 1978 was to be used to pay her hospital and doctor bills. The insurance company sent the $11,000 to Pfeifer, but the medical bills were not paid. Her case is pending.

Unknown to the district attorney's office at the time it began its investigation, Pfeifer was the subject of a State Bar investigation early last year involving the misuse of client funds in three other cases. In a stipulated agreement last June, Pfeifer admitted the charges and agreed to make restitution to her former clients.

The bar's recommended punishment: one year of suspension and four years on probation. Ten months later, the California Supreme Court has not yet acted on that recommendation. Pfeifer is currently on suspension for failing to pay her dues, according to the State Bar membership records department.

The disciplinary process is supposed to work like this:

A complaint filed with the State Bar is reviewed by a staff attorney. If it appears to be valid, it is usually assigned to an investigation referee, who is a volunteer attorney in the city where the complaint originated. (Some cases are handled by bar staff lawyers.) The referee makes a preliminary investigation, and may decide either to dismiss the complaint or issue a formal notice to the attorney involved to appear before a hearing panel of one to three volunteers.

Before the case goes to a formal hearing, the attorney under investigation may agree to a settlement. Otherwise, the panel determines the guilt or innocence of the attorney and makes a recommendation of punishment, if any. A review department of the bar assumes the role of an appeals court; it can change the recommendations of the hearing panel.

Punishment for a guilty attorney can take one of four forms: private reproval (reprimand), public reproval, suspension or disbarment. Only the California Supreme Court can suspend or disbar an attorney, and that usually is done upon the recommendation of the bar.

[illegible] vestigated. Of 6,315 complaints received in fiscal 1979, only 1,086 — fewer than one in five — were referred to investigation referees.

The low rate of investigation is not new. Ten years ago, about one complaint in four (810 of 3,182) were referred for investigation.

The bar says that the vast majority of the other complaints involve fee disputes and such minor matters as a lawyer who won't return his client's telephone calls.

Fee disputes are usually referred to local arbitration committees, while the minor complaints are often handled informally, for instance with a phone call or letter from the bar staff to the attorney.

Some observers, however, believe that many valid misconduct complaints may be dismissed as fee disputes or as too minor to warrant investigation.

A 1974 study by the American Bar Foundation concluded that client complaints are given very little credence because lawyers believe that "(non-lawyers are not supposed to be able to understand what law- [illegible]

"If they do understand, the very bases of professionalism and self-regulation is threatened because understanding of lawyers implies the threat of outside regulation," the study said.

Even when complaints are investigated, there is rarely disciplinary action. Only 161 complaints of the 1,086 referred for investigation last year resulted in either reproval, suspension or disbarment. Ten years ago, the 810 investigations led to 37 disciplinary actions.

Of all complaints last year, roughly 2 percent resulted in some form of discipline.

"From these statistics," said San Diego attorney C. Logan McKechnie, "either the members of the State Bar of California are remarkably talented and ethical, or else many complaints are not filed or many complaints filed have not resulted in disciplinary action."

Observers of the process say its secrecy, rules favoring accused attorneys, slowness and lack of professional investigator-judges and of strong sanctions are to blame for the low rate of disciplinary actions.

— Almost every part of the disciplinary process is secret, from the investigation stage through the trial. Only when an attorney is found guilty of misconduct and some form of public discipline is recommended is the matter opened to the general public.

The rationalization for secret proceedings is that the reputations of innocent lawyers unjustly accused of misconduct should be protected. But, closed hearings, according to New York lawyer Martin Garbus, allow "the doyens of the bar to bury the misconduct of their fellow doyens."

Even disciplinary hearings involving an attorney who has already been convicted of a criminal charge (in a public trial) are secret. So is a reinstatement hearing of a disbarred lawyer, even though the proceedings that led to his disbarment have by this time have been made public.

The State Bar is considering opening up those two types of hearings. But a proposal to open all hearings, which will be considered by the Board of Governors this year, is given little chance of approval.

— Almost all the investigator-referees and examiners who prosecute and judge cases against attorneys are volunteers who often work long hours without pay.

Out of more than 70,000 lawyers in the state, fewer than 500 have volunteered their services, and the small pool has led to concerns that the background and experience of the volunteers affect the outcome of investigations and trials.

In an effort to promote uniformity, the State Bar staff proposed in 1978 to experiment with a pilot program of full-time examiners and hearing referees. The bar's board of governors has never acted on that proposal. [illegible]

— In addition to the constitutional rights of counsel, of cross-examination of witnesses and others enjoyed by all citizens, an accused lawyer has other advantages.

For instance, although a disciplinary proceeding is essentially a civil matter (since a conviction cannot lead to prison), the standard of evidence used is, according to bar rules, "clear and convincing evidence sufficient to sustain a charge to a reasonable certainty."

That is a higher standard than applied in other civil trials, which are decided by "the preponderance of evidence."

Also, an accused lawyer cannot be disbarred because he invokes the Fifth Amendment right against self-incrimination. A policeman, on the other hand, can be fired for doing just that.

— Even cases which result in reprimands may take a year or 18 months. Where a lawyer faces suspension or disbarment, the process can be dragged out as long as four or five years.

In a recent case involving San Diego attorney Leon Jacobs, who was accused of abandoning his clients, some complaints went back as far as 1975. The bar began its investigation in 1976; the lawyer was suspended only late last year.

Another case involved Marin County attorney Elizabeth Jennings, who had been suspended twice earlier. In this case, a complaint was filed against her in 1978 but it was not until mid-1979 that the bar recommended her suspension to the Supreme Court. Eighteen months later she voluntarily became an inactive attorney, but the court still has not yet acted upon the bar's recommendation.

Even when an attorney has been convicted of a serious criminal charge, disciplinary action often lags. The Supreme Court routinely places on "interim suspension" an attorney convicted of a crime of moral turpitude — fraud, embezzlement, theft of client funds — but that may take as long as 18 months.

Also, the term "moral turpitude" is not always easy to define. It took two years, for example, for the bar to determine that the 1978 conviction of Oceanside lawyer James B. Burns, who accepted sexual favors from his prostitute-client in lieu of legal fees, did not involve moral turpitude. He therefore was not disciplined.

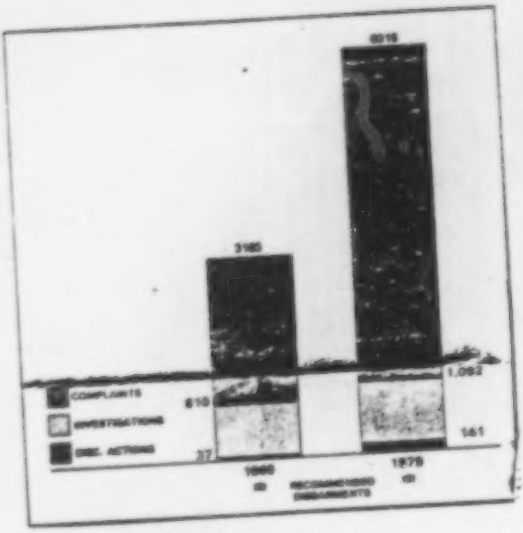
— Proportionately, only about half as many lawyers suffer the most severe penalty, disbarment, as they did a decade ago and although the number of suspensions has increased, more than 90 percent of suspended attorneys are placed on probation for part of their suspension.

While on probation, an attorney can continue his law practice uninterrupted. His conditions of probation may require him to do no more than report to the bar quarterly, saying that he is abiding by the code of professional responsibility, and pass an examination on the subject at the end of his suspension.

Bar officials admit that they have no effective means of monitoring the activities of lawyers on probation. For that matter, some suspended attorneys keep practicing because there is no systematic checkup.

So how does the bar learn if a suspended attorney is still in practice?

"Unless somebody tells us about it," said former State Bar executive director Richard Morris, "we probably won't."



A San Diego lawyer says, "If yo want it in a nutshell, the practice law is not viewed as a privilege. I viewed as a right. Once you'r pa the bar (exam), it becomes a right.

"And before anyone can take aw that right," he adds, with some h perbole, "you've damn near got prove he's an axe murderer."

Tomorrow: Incompetence. Is it [illegible]

Lawyer Incompetence Presents Difficult Problem

[illegible]ION APR 28 199

Third in a series

C

By JON STANDEFER

Staff Writer, The San Diego Union

Deputy District Attorney Alan Fenton recalls a case he prosecuted a few years ago in which the judge declared a mistrial because of "prosecutorial error."

A-1

Fenton said he was shocked and angered when he and his superior met in chambers with the judge and demanded to know what error Fenton had committed.

"The judge finally admitted that he threw out the case because the defense attorney was incompetent," says Fenton. "But he didn't want to embarrass the attorney by putting that on the record, so he called it misconduct on our part."

Fenton's experience illustrates two aspects of major concern in the legal profession: incompetence and the lack of means to deal with it.

Most members of the legal profession, from U.S. Supreme Court Chief Justice Warren Burger on down, agree that incompetence is a problem. But the magnitude of the problem, its impact on the public, what to do about it, and even the definition of incompetence are all subjects of debate.

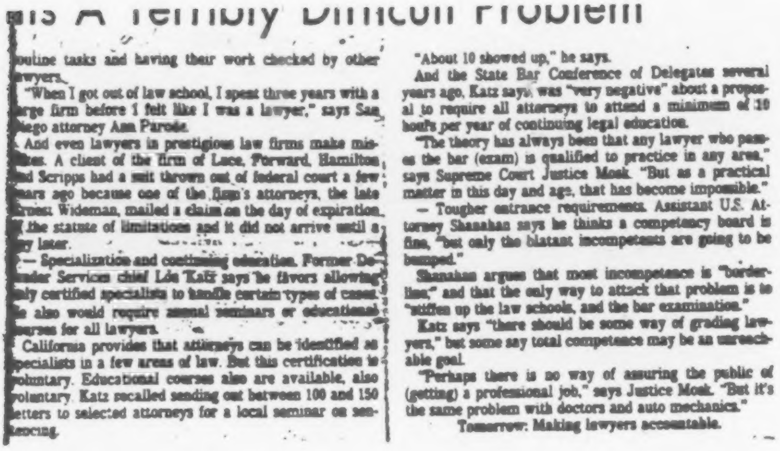
"Incompetence is a terribly difficult question," said California Supreme Court Justice Stanley Mosk recently. "The bar is just now starting to plow new ground."

Incompetence is a problem in many ways quite distinct from that of unscrupulous or unethical lawyers, although they sometimes overlap.

It is unethical, for example, for an attorney to neglect his client's interests. He may be subject to disciplinary action even though the neglect was caused by mere forgetfulness instead of, say, deliberate meanness.

But while some attorneys are disciplined for specific acts of what might be called incompetence, it is rare that a lawyer is punished for general incompetence. Justice Mosk said he recalls only one recommendation of suspension, based on incompetence, in his 16 years on the state Supreme Court.

(Continued on A-6, Col. 1)



is A Terribly Difficult Problem

outine tasks and having their work checked by other awyers.

"When I got out of law school, I spent three years with a rge firm before I felt like I was a lawyer," says San iego attorney Ann Parode.

And even lawyers in prestigious law firms make mistakes. A client of the firm of Luce, Forward, Hamilton d Scripps had a suit thrown out of federal court a few ears ago because one of the firm's attorneys, the late rnest Wideman, mailed a claim on the day of expiration f the statute of limitations and it did not arrive until a y later.

— Specialization and continuing education. Former Denders Services chief Lou Katz says he favors allowing ly certified specialists to handle certain types of cases. e also would require annual seminars or educational urses for all lawyers.

California provides that attorneys can be identified as pecialists in a few areas of law. But this certification is oluntary. Educational courses also are available, also oluntary. Katz recalled sending out between 100 and 150 etters to selected attorneys for a local seminar on sentencing.

"About 10 showed up," he says.

And the State Bar Conference of Delegates several years ago, Katz says, was "very negative" about a proposal to require all attorneys to attend a minimum of 10 hours per year of continuing legal education.

"The theory has always been that any lawyer who passes the bar (exam) is qualified to practice in any area," says Supreme Court Justice Mosk. "But as a practical matter in this day and age, that has become impossible."

— Tougher entrance requirements. Assistant U.S. Attorney Shanahan says he thinks a competency board is fine, "but only the blatant incompetents are going to be bumped."

Shanahan argues that most incompetence is "borderline," and that the only way to attack that problem is to "stiffen up the law schools, and the bar examination."

Katz says "there should be some way of grading lawyers," but some say total competence may be an unreachable goal.

"Perhaps there is no way of assuring the public of (getting) a professional job," says Justice Mosk. "But it's the same problem with doctors and auto mechanics."

Tomorrow: Making lawyers accountable.

competence Among Attorneys Pres

DAICN APR 28 1981

A-6

(Continued from A-1)

Part of the problem is that incompetence is very tricky to define. Almost every lawyer would admit to sometimes forgetting to return a client's telephone call; few would label that incompetence. But if a lawyer repeatedly forgets to return clients' calls, at some point that behavior might justify the term.

Similarly, like everyone else, lawyers — even good lawyers — sometimes make errors of judgment. How many errors of judgment equals one incompetent attorney?

"It's like (U.S. Supreme Court Justice) Potter Stewart's quote on pornography," says Assistant U.S. Attorney Michael Lipman. "I can't define it, but I know it when I see it."

Whatever the definition, incompetence affects the client, even if it is merely a matter of inconvenience.

A local attorney handling a divorce case two years ago filed notice of final judgment three days too early and informed his client that he was free to remarry, which he promptly did.

A few days later, the lawyer called the client to offer congratulations, and to inform him that his marriage was invalid because the ex-spouse learned of the filing error and had her own attorney set aside the divorce.

Even when incompetence is correctable, it can be costly. One lawyer here, unfamiliar with the limited jurisdiction of the federal system, recently had to amend his lawsuit four times before it was accepted.

"If he is on an hourly fee, it's the client who is going to be paying for that," says Assistant U.S. Attorney Don Shanahan. "And that happens time and time again."

[illegible], a wrong decision by a lawyer may [illegible] his client liberty.

In 1974, a robbery suspect sat in jail for more than a month before Deputy District Attorney Frank Sexton learned that, on the day of the crime, the suspect had been in the county detoxification center — a fact known to the suspect's attorney, Philip Andreen.

[illegible] immediately [illegible] "in the furtherance of justice," but not before he [illegible] his anger in court.

"The disturbing part of it is I notified the defense attorney this morning and told him that one of the main reasons to dismiss it, we had found evidence that this defendant was in the detoxification center at the time this particular 211 (robbery) was committed in this county, and the defense attorney advised me that he knew that all along ... why he didn't tell us, he was saving it for trial.

"So if this investigation had not arisen now, this defendant would be locked up at least until the 15th of August," Sexton went on. "And I feel that should be on the record."

Andreen told the court that he decided that informing the district attorney would not lead to dismissal and that he did not, therefore, want to alert them to the substance of my defense."

Recently Andreen, who was once named trial attorney of the month by his peers, defended his decision to leave his client in jail despite knowledge of the alibi.

"The DA wouldn't have dismissed charges if I'd have told him my client was in the detox center. He'd have said, 'Let the jury decide.' And I'd have given up 40 percent of my defense."

Andreen said his decision was a "judgment call." Sexton is less charitable.

"He wanted to pull a rabbit out of the hat at the trial."

Lawyers routinely make important judgments, and experience helps them avoid wrong ones.

Inexperience is one obvious cause of incompetence, along with ignorance and laziness. So is alcoholism, a special problem that the legal profession has only recently begun to address.

Incompetence shows up in both civil and criminal cases, and it concerns those who sit on the bench.

"I think most criminal defendants have capable representation because there are so many safeguards for them," says Municipal Judge Janet Kintner. "But I feel sorry for a lot of people involved in civil cases in my courtroom because their lawyers are incompetent."

Superior Court Judge Norbert Ehrenfreund says that the incompetence he sees in criminal cases presents a dilemma:

"If the attorney is court-appointed, then of course he can be removed. But if he is a retained counsel, how can I tell a defendant that he doesn't have the right to hire any lawyer he wants?"

Ehrenfreund and many other judges sometimes informally counsel inexperienced lawyers in private. But that also has drawbacks.

"The judge is supposed to be impartial," says federal prosecutor Shanahan. "If he is up there telling a lawyer that he ought to do this or explore that, then I'm going to be saying 'Hey, whose side are you on?'"

U.S. District Judge Gordon Thompson says that "you can't get between an attorney and his client." He cited a recent fraud case in which the defendant was found guilty. After the trial, Thompson learned that the attorney "had never handled a federal case, had never even handled a felony, and had tried only two misdemeanor cases in his career."

That lawyer had been hired by the defendant, says the judge, and "the client got what he paid for."

As difficult as identifying incompetence is knowing what to do about it.

A 1974 study by the American Bar Foundation concluded that "under the present system, we have ways of dealing with alcoholism and mental illness but not with stupidity, laziness or overevaluation of skill."

Further, said the study, "the professionals in the disciplinary agencies insist that they are unable to deal with issues of incompetence."

Some suggestions from lawyers and judges:

— Competency boards. Deputy District Attorney Fenton says incompetent lawyers should face the legal profession's equivalent to a hospital competency panel for inept doctors.

"They should just have a hearing and jerk their licenses. Just wash them out," says Fenton.

A competency board, however, would not solve the problem unless lawyers and judges would be more willing than they are now to report incompetence.

Even Fenton admits that "lawyers are afraid that they might make a mistake someday and they don't want anybody coming down on them."

— Internships. Judge Ehrenfreund says he thinks that on-the-job training for new attorneys, in company with an experienced lawyer, might alleviate some incompetence.

The federal judiciary is studying a proposal that would require lawyers who want to practice in federal court first to pass a federal bar examination and then to be involved as co-counsel in at least four cases in federal court.

Most new attorneys who join large law firms serve what amounts to internships, doing legal research and

FAULTS IN $2 MILLION SYSTEM

State Bar Resisting Disciplinary Changes

UNION APR 29 1981

Last in a series

C

By JON STANDEFER

Staff Writer, The San Diego Union

The California State Bar has an elaborate, $2-million-a-year disciplinary system that often doesn't work.

Many thoughtful lawyers and judges, aware that a weak disciplinary system harms not only the consumer but also the legal profession, believe the system could become more responsive with a few relatively minor modifications. A-1

Even State Bar leaders acknowledge many of the current disciplinary system's shortcomings, but changes are not high on the organization's list of priorities.

Editorial — Page B-6

"What you have to remember about the (State Bar) board of governors," says Harriet Katz, a non-lawyer member of that board, "is that they are not at all concerned with the practice of law. They are concerned with the governing of a large bureaucracy."

Like any bureaucracy, the State Bar is resistant to change.

In 1978, the Bar staff drew up a disciplinary-issues paper that made several proposals to open up the disciplinary process and to experiment with full-time, professional hearing examiners and referees.

Richard Morris, until recently the executive director of the State Bar, says that the present disciplinary system is several decades behind the times. The issues paper, produced at his direction, argued that openness

(Continued on A-10, Col. 4)

OPENNESS URGED

State Bar Resists Changes In Disciplinary System

UNION APR 29 1981

(Continued from A-1)

would bring the profession into the mainstream of society. A-10

Morris says the paper was never seriously debated by the State Bar's board of governors. A request to Bar headquarters for a copy got the response: "It's confidential."

"They never even had the courtesy to send a copy over to the Supreme Court," Morris says.

For promoting such changes, Morris was labeled an "empire builder" by some of the Bar hierarchy. He resigned two months ago.

Similarly, the American Bar Association is currently formulating a new Model Code of Professional Responsibility, which would clarify and strengthen regulations — but would be binding only upon those states which adopt the rules.

The California State Bar Journal reports that the board of governors last April went on record against any new attorney-conduct rules that would "dampen the adversary system or tend to lessen the primary obligation of an attorney to his client."

According to the chairman of the ABA committee working on the proposed code, Nebraska lawyer Robert Kutak, concern about the adversary system came from a proposed rule stating that "a lawyer shall be candid toward a tribunal."

In a letter to ABA members last December, Kutak said that the committee agreed that "such broad statements ... are unworkable. These statements will be eliminated from the draft."

Kutak also said that the proposed rules about disclosure of confidential information adverse to a client had been misinterpreted. Where many states now allow an attorney to disclose the commission or proposed commission of a crime by his client, the proposed rules "limit the permissive disclosure of crimes to those presenting a substantial threat of injury to the interests of another person."

"Our intention," said Kutak, "is t strengthen, not weaken, the principle of confidentiality."

Critics focus on four areas where the current disciplinary system coul be strengthened. Some of the suggestions, made by lawyers, judges an consumer groups:

— Open up. Under current confidentiality rules, only when an attorney has been found guilty and a recommendation for public discipline has been made is the public informed. Pending investigations ar [illegible] plaint does not lead to public discipline, the public has no way of determining the thoroughness of an investigation, or even if an investigatio was made.

"The whole question of confidentiality is a legitimate issue," says Robert D. Raven of San Francisco, th State Bar president. "It's tremendously difficult balancing both side I have an open mind on it."

Raven agrees that the public has legitimate interest in "seeing wha we're doing good," but says that ju an accusation of impropriety again an attorney can be "devastating."

The argument against openness i that innocent reputations would b damaged by unproven complaint But that "assumes that complaint will be automatically publicized b the news media.

As Peter Kaye, associate editor o The San Diego Union, points out, "I is extremely unlikely that we woul publish a mere complaint against a attorney except in the most grave circumstances. And even if we di his name won't mean anything t most of the people two million peopl [illegible] ho live in this county."

The State Bar did make one hange in the secrecy rules two ears ago when it began to make ublic the recommendations of disci-linary actions when they were sent o the Supreme Court, instead of aiting until the court ruled on the ecommendations.

However, since the court generally ollows Bar recommendations, that hange has not resulted in more penness, but merely shortened the ime between a determination of uilt and a public announcement of he action.

"It was just a step (toward openess)," says Robert Coyle of Fresno, hairman of the Bar's committee on isciplinary matters, "but it had to e taken before another step could be aken."

"All stages of a disciplinary proceeding should be disclosed because onfidentiality is incompatible with he profession's need to publicize at east its formal efforts at self-regulaton," said a 1974 American Bar oundation study. "Further, there is question whether secrecy of proceedings, or at least after preliminary screenings, is consistent with the licensing rationale, which requires accountability to the public."

— Take more complaints seriously. The ABF research study concluded that "clients complain chiefly about matters touching on performance, while the agencies to which they complain concern themselves almost exclusively with misconduct."

Most of the Bar's manpower in disciplinary investigations is used on cases of gross misconduct, while most client complaints are dismissed — quite often with good reason — as fee disputes or minor grievances not worthy of investigation.

The net result, however, according to the ABF study, is that client complaints generally are given little credence.

Even the California Supreme Court said in a 1966 opinion upholding the secrecy of disciplinary proceedings that "although the vast majority of the charges made against attorneys are by disgruntled clients

(Continued on A-11, Col. 3)

Bar's Disciplinary System Said Weak

C ORION APR 29 1981

(Continued from A-10)

and completely without foundation ... such complainants are somewhat satisfied by the fact that they have had their day before the tribunal."

The ABF study suggested that disciplinary agencies, while not ignoring complaints of gross misconduct, should give more attention to client complaints and stop treating them as individual client vs. lawyer disputes:

" ... (A) disciplinary agency that treats complaints as merely raising a two-party dispute is refusing regulatory jurisdiction." A-11

— Report misconduct. Attorneys have complained loudly and long that doctors are reluctant to testify against their colleagues in medical malpractice suits, yet lawyers are also guilty of refusing to report the misconduct of other lawyers.

Both the current and proposed ABA codes of conduct (non-binding in California) require lawyers to report to disciplinary authorities misconduct by another attorney.

Lawyers generally do not report misconduct, however. As San Diego attorney Peter Hughes says, "In that, we are only mirroring society. Society does not like informants."

California Supreme Court Justice Stanley Mosk agreed recently that lawyers have a moral responsibility to report misconduct.

"Although making such a report can be personally distasteful," says the ABA's proposed code, "that consideration should not deter a lawyer from carrying out his or her responsibility to the public."

— Get tough. New Jersey and Florida supreme courts recently issued rulings which indicate that these states will no longer tolerate larcenous attorneys. The courts in both states have come close to automatically disbarring any lawyer caught stealing a client's funds.

In California, as in most states, few lawyers are disbarred; none are automatically disbarred, even for the most serious crimes. Attorneys facing disciplinary action may resign to avoid disbarment and may apply for reinstatement later. Even disbarred attorneys may be reinstated after three years.

Moreover, mitigating circumstances — reasons for misconduct, such as personal or financial problems — often are taken into consideration by disciplinary authorities.

"When you talk about mitigation, the term is often abused," said Michael Schwartz of Michigan's Attorney Grievance Commission recently. "What's mitigation in a disciplinary case often would be laughed out of court (in a criminal case) — dire financial straits, alcoholism. That's not mitigation. As far as I'm concerned, that's motivation."

Files of the California Supreme Court indicate that even attorneys with multiple suspensions keep their licenses.

"Banks do not rehire tellers who borrow depositors' funds," wrote New Jersey Supreme Court Chief Justice Robert N. Wilentz in a recent discipline case. "Our professional standards, if anything, should be higher."

In the 1974 study of the disciplinary systems of several state Bar associations, including California's, ABF researchers concluded that "the implication of self-regulation without the reality of self-regulation has unfortunate consequences."

"If members of the public rely on certification and are then faced with the dismal reality of incompetence, the consequence will be lost prestige to the profession. If in fact the public does not rely on the Bar's certification and supervision processes, then the meaning of the license has already been eroded."

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[illegible] Gary A 633 17 —— [illegible]

Consumer

Gorsuch Kirgis Campbell Walker & Grover
1401 17 Av —— 534-1200
[illegible] Jeffrey L [illegible] S [illegible] —— [illegible]
Sherman & Howard 633 17 —— 297-2900

Corporation, Partnership & Business

[illegible] Peter 718 17 —— [illegible]

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Bldg. [illegible]
[illegible] E Girard —— [illegible]

Arnold & Porter 1700 Lincoln —— 863-1000
[illegible] & [illegible] [illegible] —— [illegible]
Baker & Cox 1660 17 —— 534-1700
Bailey Robert B 165 S Union Blvd —— [illegible]
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CORPORATIONS - PARTNERSHIPS
BUSINESS - COMMERCIAL
TAXES

LAKEWOOD - JEFFERSON COUNTY
165 S Union Blvd —— [illegible]

Baker & [illegible] 333 E 17 —— 861-[illegible]
Baker Robert W Ted [illegible] —— [illegible]
[illegible] & [illegible] PC [illegible] —— 571-1234
[illegible] Hoyt [illegible] & [illegible]
[illegible] W Hampden Av —— 761-[illegible]
[illegible] Edward S [illegible] —— 534-[illegible]
[illegible] Lyle A [illegible] W 5 Av —— [illegible]
[illegible] & [illegible]

CORPORATIONS - PARTNERSHIPS
PROFESSIONAL ASSN'S - QUALIFIED
PLANS - SALE OF BUSINESSES
ENTERTAINMENT, ADVERTISING &
CONSTRUCTION LAW - CONTRACTS
Trials & Negotiations, and Other
General Bus. & Comm. Legal Services

[illegible] S [illegible] —— [illegible]

[illegible] & CASSIDY

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Contracts - Partnership Agreements
Southeast Area

[illegible] E [illegible] Av —— 750-1567

[illegible] Thomas [illegible] [illegible] S [illegible] —— 758-[illegible]
[illegible] C J PC [illegible] W 14 Av —— 571-[illegible]
[illegible] Leslie G 1775 Sherman —— 861-[illegible]
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[illegible] Arlene S 633 17 —— 297-2900
Bradley Campbell & Carney
1717 Washington Av Golden —— 278-3300
[illegible] & Friedlob PC
[illegible] —— 571-1400
Brett Stephen M 633 17 —— 297-2900
[illegible] FRED C JR

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[illegible] 14 Boulder —— [illegible]

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Meyers & Company 100 N Tollgate Rd Bel Air ---------- [illegible]

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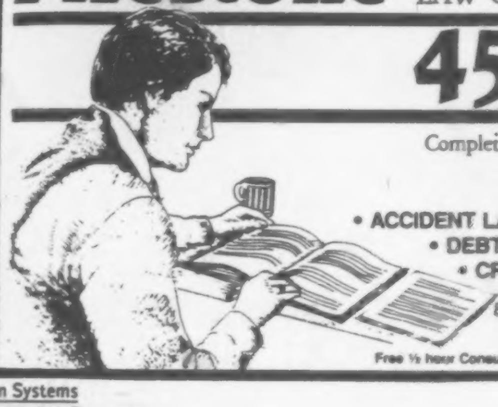

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A STUDY OF 115 CLOSED CASES SHOWED THAT THIS OFFICE COLLECTED [illegible]% OF THESE CASES. OF THESE [illegible] COLLECTED CASES, [illegible] WERE COLLECTED IN THE AMOUNT OF THE PRINCIPAL OR MORE ("MORE" MEANING INTEREST, COURT COSTS ETC.). COPY OF STUDY ON REQUEST.

HAVE YOU ASKED YOUR LAWYER WHAT HIS COLLECTION RECORD IS? HAVE YOU CONSIDERED USING A SECOND LAWYER AND LETTING EACH KNOW THAT YOU USE TWO LAWYERS, IN ORDER TO KEEP THEM BOTH WORKING FOR YOU?

WE HANDLE VIRGINIA AND D.C. CASES. MARYLAND COUNSEL IS USED IN MARYLAND. OTHER COUNSEL IS USED IN OTHER STATES. INITIAL CONFERENCE AT YOUR BUSINESS CAN BE ARRANGED.

**WILLIAM B. CLINCH (VA. – D.C.)
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ACA EXHIBIT 25

ROBERT SALTZMAN
ATTORNEY AND COUNSELOR AT LAW
2200 EAST DEVON AVENUE • SUITE 279 • DES PLAINES, ILLINOIS 60018
(Chicago, Illinois Suburb) Telephones: 312 - 298 - 1810

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April 5th, 1984
RS-027

Anesthesiologists Ltd.
720 Larch
Elmhurst, Ill. 60126

Attn: Mr. David Vanco

Dear Client,

THANK YOU for your recent inquiry and conversation with our offices.

For OVER (35) THIRTY FIVE years - - - our offices have SPECIALIZED in COLLECTION WORK in Chicago - Cook, Lake, DuPage counties.

Briefly, we enclose some information on our services. We have a large and most experienced staff of professional collectors and attorneys that utilize a complete letter, phone, personal inside and outside prelegal collection/location system that collects about 90% of the collectible accounts. We, then recommend and process litigation on anyone refusing or ignoring our requests where we locate/verify assets sufficient to enforce collection after regular efforts are exhausted, or, you may immediately have suit(s) filed on anyone you wish.

You owe it to yourself to have the protection - - and effectiveness of our PROFESSIONAL SERVICES - - WE COLLECT MORE THAN OTHER AGENCIES OR ATTORNEYS because it is all we do. Associate offices nationwide.

Very truly yours,

Sharon Martin
Business Manager

SM/lkj

P.S. CALL or MAIL us some TRIAL accounts today, or if any questions.

$8.75 Program FIRST TIME TRIAL - YOU MAY LIST (15) ACCOUNTS as a SPECIAL TRIAL OFFER for a total cost of $50.00 (A REGULAR $131.25 VALUE) within (10) days of the date of this letter - - - WE EXPERIENCE near 100% repeat users.

(TELEPHONE - - SHARON MARTIN, now for details........)

ROBERT SALTZMAN

ATTORNEY AND COUNSELOR AT LAW

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(Chicago, Illinois Suburb) Telephones: 312 - 298 - 1810

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COLLECTION PROGRAMS FOR ACCOUNTS RECEIVABLES

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A TOTAL OF $8.75 FOR EACH CLAIM HANDLED

ABSOLUTELY NO FURTHER COSTS – YOU RECEIVE 100% OF ALL MONEYS COLLECTED IMMEDIATELY.

We will supply you with computer listing forms, to give us the basic account facts necessary to process your claims.

Upon receipt of your claims, they are immediately entered into our computer. We process each claim through a series of 3 specially designed legal notices on either our law offices stationery or associate collection attorneys located near the debtor, defendant, within a 45 day period. The notices are designed to effectively persuade the debtor, defendant to repay your moneys now. You also receive a status report on each claim after 45 days and can get analysis reports of all claims at 90 day intervals. **MONEYS RECEIVED ARE IMMEDIATELY SENT 100% TO YOU.** We can handle any volume and any size claim and can file lawsuits with your authorization on anyone ignoring repayment, or proceed with full service collection.

PLAN 2

LAWSUIT COLLECTION PROGRAM

WITH YOUR AUTHORIZATION, WE CAN COMMENCE SUIT AGAINST ANY DEBTOR, DEFENDANT (S) IMMEDIATELY. 20% CONTINGENT FEE.

Our fee will be a contingent 20% upon collection and advance lawsuit costs on commercial claims.
Our fee will be a contingent 25% upon collection and advance lawsuit costs on consumer claims.
If there is no recovery, there is no contingent fee.

PLAN 3

FULL SERVICE COLLECTION PROGRAM

80% MONEYS TO YOU DURING FIRST 21 DAYS OF PLACEMENT, when you list accounts with our offices for regular collection according to the contingent fee schedule outlined below. Professional collection staff supervised by us with over 30 years legal and collection experience using a modern on-line computer program combined with letters and phone contacts. Statistical Reports sent to you on a regular basis. Suits filed with your authorization after all other means are exhausted. Contingent Fees:

20% COMMERCIAL CLAIMS – 25% PROFESSIONAL MEDICAL CLAIMS
30% HOSPITAL CLAIMS – 40% RETAIL CLAIMS – CONSUMER CLAIMS
50% BANKRUPTS – SKIPS – EXCEPTIONS ON RATE SHEET

ACA EXHIBIT 26

ROBERT J. SHERIDAN AND AFFILIATES
ATTORNEYS AND COUNSELORS AT LAW
1704 R STREET, N.W.
WASHINGTON, D.C. 20009
(202) 462-0313

ROBERT J. SHERIDAN
(WASHINGTON, D.C., MARYLAND, VIRGINIA)

MARYLAND OFFICE:
345-7080
(IF NO ANSWER: 345-7002)
VIRGINIA OFFICE:
237-4777

Collections Department

Dear Sir/Madam:

I am an attorney in Washington, D.C. licensed to practice in the District of Columbia, Maryland and Virginia. While I run a full-time general practice, I also manage a full-time debt collections practice in these states and around the country through local counsel. I am taking on several associates and merging my practice with other local lawyers in order to more efficiently handle the dual caseloads.

For any collection matters involving debtors in Maryland, Virginia or the District of Columbia, my firm is the most effective, for reasons set forth in the attached supplement. We even assist other law firms (many of which call themselves "collection firms") who have debtors they can't trace, or judgments they can't execute. In a sense, we've become the specialist for the specialists, using the most imaginative and intensive investigation methods to locate debtors and their assets, and before these other firms are done dusting off these dead files, we have the sheriffs seizing all the debtor's assets.

And with debtors in the rest of the country, we perform collection * agency tasks at a considerable discount to the creditor (agencies always overcharge and sit on accounts until they're completely lost). We either generate an immediate full or substantial collection or we immediately place the account with closely corresponding attorneys for lawsuit, judgment and execution.

So forget about collection agencies (all useless) and collection firms
* (who spinelessly beg debtors for pittance payments) and go with a firm
* that pursues debtors with a vengeance. Send your accounts today and let us show you some real collections.

Thank you for your attention and consideration in this matter.

Sincerely,

Robert J. Sheridan

Robert J. Sheridan

Our performance on collection matters far exceeds that of the so-called "collection firms" which purport to "specialize" in collections but in reality are simply incapable of handling any type of legal matter. The simple reason for our superior results on collections is that WE ARE AGGRESSIVE LITIGATORS(not wimpy, paper-shuffling, nickel-dime payment agreement types who call themselves attorneys)(and agencies are even worse) WHO VIGOROUSLY AND MERCILESSLY PURSUE DEBTORS in the same manner as we would handle a major felony or major civil suit. Whether you currently use in-house collectors, outside agencies, or "collection" lawyers, read on and find out why we are the only solution to your collection problems.

QUICK REFERRAL OF ACCOUNTS IS CHEAPER FOR YOU THAN IN-HOUSE ATTEMPTS, EVEN THOSE THAT HAPPEN TO BE SUCCESSFUL. You may wonder why you should refer accounts to any outside party, mistakenly thinking that you're saving money by in-house mechanisms. But if a debtor is ever going to pay a DEBT, it WILL BE PAID 6-12 MONTHS SOONER WITH INSTANT LEGAL ACTION. On contingency fee cases you are actually SPENDING A MERE $20-$40 PER $1,000 OF DEBT, because you get on the average a full year of additional cash flow, and combining the potential reinvestment profit of that extra cash with the tax deduction you'll take for the legal fees means you've recovered $960.00 to $980.00 of the $1,000.00 without spending a dime in overhead, without risking the debtor skipping, changing names, going bankrupt, removing assets, etc. All you need is the right attorneys!

COLLECTION AGENCIES ARE USELESS, LOSE MORE DEBTORS THAN THEY NAIL, AND CHARGE THE CREDITORS MORE THAN MOST LAW FIRMS WOULD. Collection agencies have absolutely no power to do anything but harass, thereby exposing the creditor to(groundless or well-based) treble damage suits. They will not get the accounts to a lawyer for suit, for they lose their fees. Most "share" fees with attorneys, an illegal and unethical process, and the portion they offer the attorneys is such a pittance that no decent attorney has any incentive to actively pursue the debtor. And by the time the lawyer gets the account for that pittance fee, the deadbeat is long gone. Even if they get the entire account collected in ten(10) seconds, the agency has already charged you nearly twice what an attorney would charge, and no agency is faster than any attorney. The majority of debtors laugh collectors off the phone, particularly when they're calling from thousands of miles away(a bizarre practice of agencies: while an agency may have a branch in the debtor's city, the account may be worked from another branch on the other side of the country; how is the distant branch supposed to effectively investigate assets, etc., if it doesn't know the territory, local channels of information, etc.??) And what recourse do you have when the agency is grossly negligent?

REGIONAL LAW FIRMS CAN MORE EFFECTIVELY PERFORM THE TYPICAL AGENCY TASKS SCREENING VOLUNTARY PAYERS WHILE GETTING YOUR ACCOUNTS INTO COURT WITHIN DAYS OF RECEIVING THE ACCOUNT. Instead of having some agency send letter and make calls from across the country, why not use one(1) national law office like mine and/or five(5) or six(6) regional law firms located in major cities like Boston, New York, Washington, Chicago, etc. They can send the letters, make the calls, etc., charging you considerably less than an agency would, and would have the accounts of uncooperating deadbeats immediately placed with affiliated counsel for suit, judgment and execution. The regional firm has no incentive to hang on to the account to the detriment of the creditor, as all agencies would, since the law firm to which it refers the matter will obviously reciprocate by referring future legal matters, collection and otherwise, back to the regional firm. On the other hand, what incentive does an agency have to give up part of its fee by giving the matter to an attorney. How can that attorney reciprocate? What can he give the agency? And because the referring regional firm would, at the most, take a few % points for set-up and referral, the receiving firm that does all the work is getting all(or most) of the fee offered by the creditor, and thus has an incentive to vigorously pursue the debtor. And if either of these law firms is unable to collect, do you think any agency would have had any luck? In short, collection agencies squeeze more blood from the creditor, and from the law firms they eventually refer all their dead matters to, than they ever squeeze from the debtors. But by using this regional/local law firm approach, you get the benefit of expedited letter/call collections, as well as IMMEDIATE LAWSUIT AND JUDGMENT EXECUTION ON DEBTOR ASSETS; YOU STILL PAY THE SAME PERCENTAGE (AND PROBABLY MUCH LESS) PAYED TO COLLECTION AGENCIES. Our network of lawyers, paralegals, investigators, process servers, and information bank contacts, throughout the various states can handle large collection volumes(and the larger the volume, the more efficiently they can be handled), performing typical agency tasks better than the agencies can, and earn the same money through voluntary payment agreements as through litigation support, skip-tracing, asset investigation, etc. Accelerating accounts into lawsuit means more money for the creditor and thus more money for these people, since we give bonuses for bank accounts located, cars found, etc. WE FULLY SERVE THE CREDITOR'S INTEREST BY MOVING RAPIDLY TO JUDGMENT AND ASSET EXECUTION BEFORE THE REMAINDER OF THE COLLECTION AGENCIES AND COLLECTION FIRMS GET OUT THEIR FIRST DEMAND LETTER, AND THE DEBTOR IMMEDIATELY KNOWS HE/SHE CAN'T PLAY WITH US AS HE/SHE CAN PLAY WITH THE OTHERS. RESULT: YOU'RE THE ONLY CREDITOR OF THAT DEADBEAT TO GET ANY MONEY; YOU GET IT ALL, HIS/HER OTHER CREDITORS GET SHUT-OUT.

WE GUARANTEE THE FOLLOWING:

1) FAST ACTION AND RESPONSIVENESS TO THE CREDITOR'S NEEDS: We give the debtor five(5)days to substantially reduce the debt, or the sheriff is at his/her door, often with a tow truck in the driveway on a pre-judgment vehicle attachment. Being used to the gutless wonders of the collection field, the deadbeat suddenly sees the axe falling, and invariably pays off completely within days.

2) AGGRESSIVE LITIGATION TECHNIQUES: We file numerous pre-trial motions to accelerate judgment and maintain the pressure on the debtor/debtor's attorney to squeeze cash payments during pendency of suit.

3) EARLY JUDGMENT AND TIMELY EXECUTION: Our collection people and investigators utilize some of the most inventive and intensified mail and telephone techniques(we sometimes wish we could patent them) to LOCATE DEBTOR ASSETS. Our lawyers then have wages and bank accounts frozen, cars towed away, etc., before the remainder of the debtor's creditors have their agencies or firms send their first "demand" letter ("begging" letter would be more appropriate, since none of them ever follow up, and all take pittance payments so they won't have to file suit, let alone go to court;and they call themselves lawyers!) THE RESULT IS THAT YOU GET YOUR MONEY!

4) ECONOMICAL RATES: We charge our clients less than any

of the so-called competitor firms or agencies, and we work for the money. You want legal action, and you get legal action!

5) FAST REGULAR REMITTANCES AND STATUS REPORTING: We keep you posted on the progress of your accounts, reporting monthly on all your accounts. Significant events on particular accounts are reported more often, as they happen. Sizeable collections, voluntary or involuntary, are remitted upon clearance of the payment through our escrow account. Smaller payments are accumulated through the month and remitted with a cumulative monthly statement.

6) COURTROOM COVERAGE THROUGHOUT THE COUNTRY: The law firms in the various states act in close concert to expedite collection of creditor claims, reporting directly to the creditor and to me. Thus the creditor has an additional(though probably never necessary) safeguard in my monitoring of case progress with each firm. And in many cases where the accounts are large enough to warrant the travel expense (which I normally absorb), I'll personally handle the matter by going to trial with the sponsorship of local counsel.

7) LOSS PREVENTION ADVICE: While not necessarily in our own interest, we strive to reduce the creditor's exposure to future delinquencies. This service, usually complimentary, includes re-writing of credit agreement forms, coaching your in-house collectors, etc., to the extent you wish to have this done. This may reduce future business from you, but we believe in fully representing the client's interest and protecting the client in the future.

8) FULL ARRAY OF COMPETENT, REASONABLY PRICED, LEGAL SERVICES ON NON-COLLECTION MATTERS: As mentioned previously, we are aggressive litigators capable of handling the widest variety of legal matters. Your company may need a lawyer for other matters, and we're available at any time to discuss these other problems with you. Since we give considerable discounts to existing clients who bring in other types of work, your company can save large amounts of money paid to some of these other attorneys on these matters(and usually these firms are far over-priced and too snobby to handle certain matters, and are no more competent than any of the lawyers working with me). Why pay $200+/hour to some firm to move commas around on some federal regulation drafted by an equally illiterate bureacrat? And why deal with innumerable law firms when one firm in each major city can do all your company's work?

9) DISCOUNTED LEGAL FEES TO COMPANY EMPLOYEES AND FAMILY AND FRIENDS: Being a full-service law firm, and wanting to show our appreciation to clients for retaining us, we offer considerable fee discounts to employees, friends, family, etc., who later consult us as a result of their connection with you or your company on matters not involving your company. Since we do a superior job on those cases, they invariably are grateful for your referring them to us.

WE HOPE THAT YOU WILL SOON ESTABLISH WITH US WHAT WILL UNDOUBTEDLY BE AN ENDURING AND BENEFICIAL PROFESSIONAL RELATIONSHIP. WHY NOT LET US PROVE THIS TO YOU NOW? SEND SOME RANDOM SAMPLE OF ACCOUNTS TO US, WITH YOUR PROPOSED FEE AGREEMENT, AND WE'LL IMMEDIATELY GENERATE CASH RETURNS FOR YOU.

RICHARD M. SHERMAN
Attorney at Law

108 S. Franklin Avenue
Valley Stream, New York 11580

Telephone
516-825-8000

ACA EXHIBIT 27

Gentlemen:

I am taking this opportunity to offer my services and expertise in the area of collection work, which I have specialized in for the past 17 years in Valley Stream, New York.

Naturally, as most others in the industry, I work strictly on a contingency basis with no charge in the event my efforts are unsuccessful. Contrary to most corresponding attorneys, I advance all court costs and recover the same from the defendant in the action.

My fee charged is 20% of the amount collected. I remit on a monthly basis, on or about the 15th of each month, reflecting all payments made on the previous calendar month from the 1st through the 31st. Status reports are furnished on request, and uncollected matters are returned on a quarterly basis.

I am currently the collecting attorney for The Manufacturers Hanover Trust Company, whose main office is in Hicksville, Long Island; The Brunswick Hospital Center, Inc. in Amityville, New York; the Franklin General Hospital of Valley Stream, Long Island, New York.

I mention these three so that you may feel free to call upon them for references.

My office is especially geared toward handling volume collection work, and I have an adequate supply of skip-tracers to assist me in recovering my judgments. I would be delighted to handle some of the New York area collection work on a contingency basis, and seek to establish a mutually advantageous relationship with your firm in the near future.

I am enclosing a few of our forms for your mailing convenience. Should you have any questions, please do not hesitate to call me.

Very truly yours,

Richard M. Sherman

Richard M. Sherman

RMS:cs

Enclosures

ACA EXHIBIT 28

MACHOL and MACHOL, P.C.
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

JACQUES A. MACHOL, JR.
JACQUES A. MACHOL III

CAROL O'BRIEN
KELLY ALBERS

MAILING ADDRESS
POST OFFICE BOX 9345
DENVER, COLORADO 80209-0345

32 SOUTH BROADWAY
DENVER, COLORADO 80209-0345
TELEPHONE 744-3241
AREA CODE 303

Robert Peterson
President
Iowa Account Services Corp.
Box 1303
Storm Lake, IA 50588

Dear Mr. Peterson:

We would like to tell you about our firm's capabilities in collection cases and offer our services to you for any such matters you may have anywhere in the entire state of Colorado. Collection agency representation, on a direct basis for both commercial and retail collections, is our primary specialty.

The senior member of our firm, Jacques A. Machol, Jr., has been involved in collection litigation for over thirty years in the state of Colorado. With computer automation and extensive use of paralegals, we are able to assure a high degree of efficiency and direct personal contact with our clients. In addition, this allows us to provide tailored status reports as may be required. We are willing to travel, and that personal effort allows us to offer effective professional representation anywhere in the entire state of Colorado.

Our firm has one of the largest collection clientels in the area. We represent collection agencies, financial companies, banks, governmental agencies, individual businesses and professionals.

Our contingent fee is 22.50% of all amounts collected with Court costs being advanced by our clients. We require an advance deposit against our out-of-pocket expenses of $45.00 if the claim amount is $5,000.00 or less, and $120.00 if the claim amount is in excess of $5,000.00. All Court awarded and collected attorney fees are in addition to our contingent fee, and counterclaim defenses are separate and billed on an hourly basis. No suit fees are charged.

Please keep the enclosed card and contact us if we may answer any questions or be of any service to you.

Very truly yours,

MACHOL and MACHOL, P.C.

Jacques A. Machol, III
JAM3/fb

ACA EXHIBIT 29

Balyeat Law Offices, P.C.
A Professional Corporation
Bancroft-Sussex Building
704 West Sussex
Missoula, Montana 59801

H. John Balyeat
Attorney-at-Law

Legal Department (406) 721-2841
Collection Department (406) 721-2846

April 11, 1985

To Whom It May Concern:

We are pleased to offer our collection services to you upon the following recommendations:

1. We are experienced in collection work and our office is structured to handle all your collections and related needs:

A. We have handled a large volume of collections for approximately ten years.

B. We have a complete collection department with a full-time collections manager and three full-time legal assistants to handle your accounts. If you have any questions regarding specific accounts you may call us for an immediate up to date status report on any account. Just ask for Cindy, my collections manager, or the following legal assistants:

Walt - Debtors' last names A-G
Lily - Debtors' last names H-P
Mary - Debtors' last names Q-Z

C. Our collection department performs all those functions performed by collection agencies but with direct in-house legal supervision and lawyer clout.

D. As an attorney emphasizing collections, I can keep you appraised of all the latest laws effecting creditor-debtor relations including Federal Truth in Lending laws, state usury laws, state laws on legal interest computation procedures, insurance laws, worker's compensation provisions, medicare and medicaid laws, and errors and omissions liability laws.

E. We can provide truth and lending disclosures, credit applications and personal guarantee forms at no charge to you.

F. We routinely perform all necessary skip tracing and all necessary asset checks. In this regard we have access to all city, county, state and federal official records; some of these records are only obtainable through specific legal procedures. In addition, we have extensive in-house reference files including a credit reporting terminal and access to any other information gathered by credit reporting agencies upon payment of a nominal fee. Our files are, of course, totally confidential and any information on debtors therein is not for sale to other collection agencies or firms nor other creditors, who may have claims against the same debtor.

2. There are many advantages to our collection services over collection agencies:

A. Collection agencies are governed by the Fair Debt Collection Practices Act which requires that suit be filed in the county of the debtor's residence. As an attorney, I am exempt from this Act, allowing me to file suit where the debt was to be paid, i.e. the county of the creditor's place of business. This can save delays in filing suit, logistics problems in prosecuting the suit, and ultimate collection of the account. We do not have to refer your accounts to other counties which usually involves fee splitting and further delays and expenses, including travel (of attorney and witnesses) to other counties in the event of trial or other court hearings.

B. Even though the debtor does not have the present means to pay your account, the debtor may own equity in property of some kind. As an attorney, I can prepare and file the necessary documents to secure your debt without further cost to you; once secured, ultimate collection is more probable.

C. As an attorney, I can handle legal issues, e.g. when the claim is disputed, or an insurance company is involved, or third-party claims by the debtor are a possible source of payment.

D. As an attorney, I can make legal decisions as to all possible parties who may be legally liable for the debt, whether individuals, partnerships or corporations.

E. As an attorney, I know when and how to "pierce the corporate veil", where it may be possible to obtain liability to individual owners.

F. You should receive an increase in recovery percentage of collection from just having the debtor being contacted by a law firm.

3. Our rates and other program benefits compare favorably with other collection services, while providing a more professional format and propriety to the collection of your accounts. We have two basic rate programs at your option:

A. 30% before suit is filed, 45% after suit is filed, and you will receive a monthly work report and statement which itemizes out-of-pocket expenses to be reimbursed by you;

OR

B. 33 1/3% before suit, 50% after suit with all costs deferred and no monthly work report or statement.

4. For those of you who do not want your name in the "green sheets", we can obtain a legal assumed business name on your behalf to act as a party Plaintiff for filing of lawsuits and other collection efforts.

5. It may make it easier to turn over accounts to us and to keep your records consistent if you fill out one of the attached legal assignments for each account you want to turn over to us for collection, attach a copy of the statement, and drop it in the mail; you may desire to retain a photocopy of the assignment with your records on each account assigned.

6. The collectibility of accounts seems to be directly related to the age of the account, the creditors type of business, and the thoroughness of the creditors credit extension procedures. Delays after assignment for collection are as detrimental to collectibility as delay before assignment. As an attorney, I don't delay filing suit if pre-suit collection efforts are not successful. Once suit is filed, I use every legal means to enforce the debt even if non-routine or innovative legal methods are necessary. This fact, together with my personal reputation as a tenacious collection attorney, I believe results in a higher collection rate than my competitors. Exact figures on success rate by any collection service would be mere conjecture due to confounding statistical variables.

7. For accounts turned over within 100 days of the last charge

we offer a free pre-collect system featuring a demand letter on our law office letterhead prepared and sent by our office. The notice is sent within one business day of receipt in our office of the account. If an account is paid in full within ten days, we will automatically drop it from our system with no charge for our services. If the account is not paid in full within ten days, we will automatically begin collection procedures under our existing percentages.

Quite often accounts become uncollectible because too much time has elapsed before being turned over for collection. This free ten-day pre-collect notice will help minimize time loss and allow you to receive the full benefit of your accounts.

6. Though our services must be paid for in some fashion, we receive no compensation whatsoever for our services unless the account is collected. Only upon actual payment does an account result in cash flow to your business. In the final analysis, the only good account is an account actually collected.

I appreciate your time in reading this prospectus and sincerely say that we desire to be of service to you. If you would like any further information, such as how to turn over an account, please do not hesitate to contact me or my collections manager, Cindy.

Sincerely,

John Balyeat

H. John Balyeat

HJB/clg

H. JOHN BALYEAT, President
Attorney-at-Law

CINDY LEE GAUME
Collections Manager, [illegible]

Balyeat Law Offices, P.C.
A Professional Corporation

[illegible] W. Sussex
Brooks & Sussex
Missoula, Montana 59801

Legal Dept. (406) 721-38
Collection Dept. (406) 721-38

ACA EXHIBIT 30

This system gives you the power of an attorney.

Now you can collect the money that is owed to you fast, and efficiently with the most incredible system breakthrough in collecting past due receivables.

You will be amazed by the expediency and the remarkable increase in your rate of recovery at a significantly lower cost. This increased efficiency is the result of a higher degree of professionalism and the immediate localization of your claim to a collection specialist attorney who can implement the desired action without delay.

[redacted] has , a national network of law firms specializing in collection, uses the most expedient, professional means allowed by law to turn your collection problems in to ready cash.

As a member of [redacted] you are assured of highly professional legal representation anywhere in the country with the added advantage of special member rates. In many cases you can collect past due receivables for as little as $15.00 per claim, regardless of the size of the debt (without paying high collection agency fees plus an additional attorney's percentage).

PHASE I
ATTORNEY DEMAND LETTERS

These letters will unmistakably emphasize the seriousness of your intent to collect your money and demand that immediate payment be made.

If you have delinquent debtors in any of the 50 states (service is currently expanding into many foreign countries), one Attorney Authorization form per claim sent to the National Claims Center will direct one and if necessary a second attorney demand letter to your debtor. Each letter will be individually signed emanating from our local attorney's office in the legal jurisdiction of your debtor.

If your claim is settled during this initial phase of the "legal" process your total fee is $15.00 as a member, and you will receive the full amount collected.

PHASE II
CONTINUED LOCAL COLLECTION EFFORTS BY ATTORNEY

If payment is not received within fifteen (15) days of the attorney's second demand letter, he will initiate a personal collection procedure against your debtor using whatever legal and reasonable means available. If he is successful in collecting during this phase, the attorney's compensation based solely on the amount collected is as follows:

COMMERCIAL RATES
- 20% on the first $300.00
- 18% on the next $1,700.00
- 15% on excess over $2,000.00

CONSUMER RATES
- 25% on claims in excess of $125.00

RATES FOR ALL SMALL CLAIMS
- 33⅓% on claims up to $125.00

(NOTE: the above rates are contingent upon collection, if collection is not effected there are absolutely no additional charges)

The advantages to you during this phase of this sophisticated system are:
- Localized collection efforts on your behalf by a professional collection attorney are proven more effective than out of state collection agencies.
- In case of payout settlement accepted by you, the attorney can safeguard your interests.
- Your member attorney is exempt from the requirements of the Fair Debt Collection Practices Act of 1978, you are therefore protected against judgements on counter claims by your debtor based on unfair collection practices.

PHASE III
LAWSUIT OR OTHER LEGAL PROCEEDINGS

If it is necessary to proceed further the attorney will recommend that suit be instituted and he will forward suit recommendations and suit requirements. You have the option to authorize your [redacted] member attorney to either litigate against your debtor or take no further action.

As a member of [redacted], your suit fees and court costs will be clearly outlined before you make the decision to proceed. You will find the above rates plus suit fees and court costs are, in total, about half of what you might pay for collection services outside this nationwide system.

The advantages to you during the attorney litigation phase are:
- Significantly reduced costs to litigate

(continued on next Page)

- Sent recommendations from a local attorney specializing in collection, familiar with your debtor, the claim, and its collectability.

As a member of [redacted] you have available to you the benefit of full collection services nationwide including:

- Immediate collection
- Immediate litigation
- Legal representation at your debtor's bankruptcy proceedings
- Information on various state collection laws
- The attorney has the ability to monitor settlement agreements on a local level and to take immediate legal action in case of default
- Legal opinions from your member attorney necessary for tax write-offs of uncollectible claims
- Follow up status reports: at any time you can call our special Customer Hotline and request a status update.

Most important of all, you should note that [redacted] maintains a national network of the finest most reputable collection attorneys in the country. This is accomplished through a continuous high volume flow of claims from our existing members as well as the addition of thousands of new members secured by our national marketing organization. [redacted] currently represents some of the largest corporations, banks, insurance companies, and financial institutions in America as well as numerous small and medium size businesses.

So when your debtor says, "the check is in the mail", let your [redacted] local member attorney make sure it is! Thousands of satisfied clients are now enjoying a remarkable speedup in their cash flow at substantial savings.

Why give a large percentage of your receivables to a collection agency. Why waste another minute of your valuable time waiting for checks that might never be sent. Make one very important phone call today and collect the money that is owed to you now!

For further information concerning [redacted] and your privileges of membership, call TOLL FREE (800) 223-0772. In New York state call (212) 687-9245.

Or write:

[redacted] Inc.

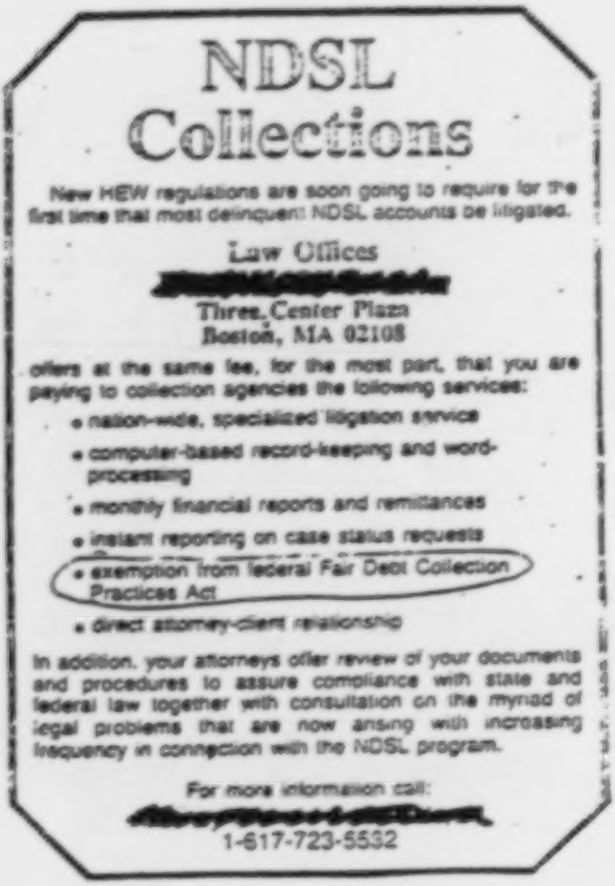
North Eastern Regional Office
11 East 44th Street
New York, New York 10017
© 1980 [redacted] Inc.

[illegible]
[redacted]
OF NORTHERN CALIFORNIA
2020 Shadelands Dr.
Walnut Creek, CA 94598
(415) 932-4877

[redacted]

The dignified yet effective method of speeding up your cash flow without using a collection agency.

ACA EXHIBIT 31



NDSL Collections

New HEW regulations are soon going to require for the first time that most delinquent NDSL accounts be litigated.

Law Offices
[redacted]
Three Center Plaza
Boston, MA 02108

offers at the same fee, for the most part, that you are paying to collection agencies the following services:

- nation-wide, specialized litigation service
- computer-based record-keeping and word-processing
- monthly financial reports and remittances
- instant reporting on case status requests
- exemption from federal Fair Debt Collection Practices Act
- direct attorney-client relationship

In addition, your attorneys offer review of your documents and procedures to assure compliance with state and federal law together with consultation on the myriad of legal problems that are now arising with increasing frequency in connection with the NDSL program.

For more information call:
[redacted]
1-617-723-5532

ACA EXHIBIT 32

H.R. 237 Co-Sponsors as of

October 7, 1985

Frank Annunzio (D-IL-11)[2,3]
Bob Stump (R-AZ-3)
Tommy Robinson (D-AR-2)
Glenn Anderson (D-CA-32)
Jim Bates (D-CA-44)
Anthony Beilenson (D-CA-23)[1]
Howard Berman (D-CA-26)[1]
Tony Coelho (D-CA-15)
William Dannemeyer (R-CA-39)[1]
Duncan Hunter (R-CA-45)[1]
Robert Lagomarsino (R-CA-19)[1]
Bill Lowery (R-CA-41)
Matthew Martinez (D-CA-30)
Esteban Torres (D-CA-34)[2]
Hank Brown (R-CO-4)[1]
Patricia Schroeder (D-CO-1)[1]
Nancy Johnson (R-CT-6)
Stewart McKinney (R-CT-4)[2]
Bruce Morrison (D-CT-3)[1,2,3]
Thomas Carper (D-DE-AL)[2]
Bill Chappell (D-FL-4)[1]
Earl Hutto (D-FL-1)
Andy Ireland (R-FL-10)
William Lehman (D-FL-17)
Doug Barnard (D-GA-10)[1,2,3]
Buddy Darden (D-GA-7)[1]
Lindsay Thomas (D-GA-1)
Pat Swindall (R-GA-4)[1]
Richard Stallings (D-ID-2)
Richard Durbin (D-IL-20)[1]
Lane Evans (D-IL-17)[1]
Harris Fawell (R-IL-13)[1]
Kenneth Gray (D-IL-22)
John Grotberg (R-IL-14)[2]
Charles Hayes (D-IL-1)
Henry Hyde (R-IL-6)[1]
Edward Madigan (R-IL-15)
Lynn Martin (R-IL-16)
Robert Michel (R-IL-18)
John Porter (R-IL-10)[1]
Sidney Yates (D-IL-9)[1]
Dan Burton (R-IN-6)
Elwood Hillis (R-IN-5)[1]
Andrew Jacobs, Jr. (D-IN-10)[1]
John Myers (R-IN-7)
Cooper Evans (R-IA-3)
Jim Leach (R-IA-1)[2]
Dan Glickman (D-KS-4)[1]
Pat Roberts (R-KS-1)
Jim Slattery (D-KS-2)[1]
Bob Whittaker (R-KS-5)
Carroll Hubbard, Jr. (D-KY-1)[1,2]
Gene Snyder (R-KY-4)[1]
Helen Bentley (R-MD-2)
William Broomfield (R-MI-18)
John Conyers (D-MI-1)[1]
George Crockett (D-MI-13)[1]
William Ford (D-MI-15)
Carl Pursell (R-MI-2)
Guy Vander Jagt (R-MI-9)[1]
Sander Levin (D-MI-17)[1,2]
Howard Wolpe (D-MI-3)

Bill Frenzel (D-MN-1)
Tim Penny (D-MN-1)
Martin Sabo (D-MN-5)
Arlan Stangeland (R-MN-7)
Bruce Vento (D-MN-4)[2]
Vin Weber (R-MN-2)
Wayne Dowdy (D-MS-4)[1]
Webb Franklin (R-MS-2)[1]
Trent Lott (R-MS-5)[1]
Richard Gephardt (D-MO-3)[1]
Harold Volkmer (D-MO-9)[1]
Robert Young (D-MO-2)
Doug Bereuter (R-NE-1)[2]
Virginia Smith (R-NE-3)
Dean Gallo (R-NJ-11)
James Howard (D-NJ-3)
Manuel Lujan, Jr. (R-NM-1)
Joseph Addabbo (D-NY-6)[1]
Sherwood Boehlert (R-NY-25)
Frank Horton (R-NY-29)[1]
Jack Kemp (R-NY-31)
Steven Neal (D-NC-5)[2,3]
Byron Dorgan (D-ND-AL)
Marcy Kaptur (D-OH-9)[2]
Louis Stokes (D-OH-21)[1]
James Traficant (D-OH-17)
Chalmers Wylie (R-OH-15)[1,2,3]
Glenn English (D-OK-6)
Dave McCurdy (D-OK-4)[1]
Mike Synar (D-OK-2)[1]
Joe Kolter (D-PA-4)
Thomas Ridge (R-PA-21)[1,2,3]
Fernand St Germain (D-RI-1)[1,2,3]
Carroll Campbell, Jr. (R-SC-4)
Thomas Hartnett (R-SC-1)
Floyd Spence (R-SC-2)[1]
Robin Tallon (D-SC-6)
Thomas Daschle (D-SD-AL)
Bill Boner (D-TN-5)[1]
Jim Cooper (D-TN-4)[1,2]
Harold Ford (D-TN-9)
Ed Jones (D-TN-8)
Marilyn Lloyd (D-TN-3)
Don Sundquist (R-TN-7)
Albert Bustamante (D-TX-23)
Tom DeLay (R-TX-22)
Henry Gonzalez (D-TX-20)[1,2,3]
Charles Wilson (D-TX-2)
David Monson (R-UT-2)
Frederick Boucher (D-VA-9)[1]
Jim Olin (D-VA-6)
Don Bonker (D-WA-3)
Rod Chandler (R-WA-8)[2]
Norman Dicks (D-WA-6)[1]
Thomas Foley (D-WA-5)[1]
Mike Lowry (D-WA-7)
John Miller (R-WA-1)[1]
Sid Morrison (R-WA-4)
Al Swift (D-WA-2)
Robert Wise, Jr. (D-WV-3)[1]
Jim Moody (D-WI-5)
Toby Roth (R-WI-8)[2,3]

(Party-State-District)

[1] Attorney

[2] Member, Committee on Banking, Finance and Urban Affairs

[3] Member, Subcommittee on Consumer Affairs and Coinage

(OVER)

Recap: 124 Members (72D, 53R); 30 states, 51 attorneys; 21 members of Banking Committee (14D) of which 9 are members of Annunzio's 12-member Subcommittee.

6 members (Hastings (CA), Vento (MN), Stokes (OH), Ford (TN), Bonior (MI), and Lowry (WA)) have 100% voting records for [illegible] [illegible] Federation of America. 14 members have 85% or higher [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Corporation.

16 Members have 85% or higher cumulative voting ratings by the U.S. Chamber of Commerce: Lowery (CA), 90%; [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 85%.

Chairman ANNUNZIO. Mr. Sheppard, you want to go first? Mr. Sheppard.

Mr. SHEPPARD. Thank you.

STATEMENT OF DALTON SHEPPARD, PRESIDENT, AMERICAN COLLECTORS ASSOCIATION

Mr. SHEPPARD. Thank you. Members and staff of this distinguished subcommittee. We appreciate very much this opportunity to express our views.

Our association shares your commitment to consumer protection. And because of that, we hope you will see fit to give H.R. 237 a favorable report to your full committee.

We all agree that the Fair Debt Collection Practices Act represents a significant effort to protect the American consumer from abuse and harassment by setting universal standards for third party debt collectors.

Since passage of the FDCPA 7 years ago, we have worked diligently to achieve compliance with the law. We have conducted seminars, issued guidelines and published a manual on the FDCPA recognized as a standard reference in the industry with over 24,000 copies circulated in three editions. In fact, the Federal Trade Commission has recognized our manual as the finest available anywhere.

I say all this by way of emphasizing our commitment to consumer protection. Seven years ago, we made a solemn pledge to make this measure work. And I think that ACA members throughout the country have fulfilled that pledge.

By the same token, when the FDCPA was enacted, you recognized that abusive debt collection practices can cause consumer injury. Such abuses were shown to be contributing factors to loss of jobs, bankruptcies, invasion of privacy and other forms of consumer injury.

Therefore, the major point we are making here today is a point of equity. When a consumer is injured through abuse or harassment, from the consumer's standpoint, it makes no difference whether the debt collector holds a law degree. The rules governing debt collection should apply evenly to all of us who are in the business of collecting past due bills.

But recent experience has shown that some lawyers and law firms have taken advantage of this exemption by setting up collection agencies, often hiring nonlawyers to carry on routine collection activity and operating with impunity, in some cases, with collection tactics otherwise prohibited by law.

Indeed, some of these law firm collectors have even advertised their exemption from the FDCPA as a way of soliciting business, implying that they can be tougher and more effective because they are not restrained by law.

The bill now before this subcommittee, H.R. 237, would close this loophole by eliminating the attorney exemption.

In our detailed statement which we have submitted to your subcommittee, we have cited numerous specific examples of collection tactics employed by certain law firm collectors which are clearly abusive in nature as defined by law. We have also included samples of advertising that present the exemption as a marketing device.

Therefore, in summary, we ask you to support H.R. 237, first because the American consumer needs this protection, protection all of us sought to provide when the FDCPA was enacted 7 years ago.

Second, we seek passage of H.R. 237 because the current lack of regulatory uniformity is unfair to the collection industry.

Again, we appreciate this opportunity to be heard on important issues of consumer protection in fairness to the collection industry.

On behalf of our 3,100 member offices, employing over 40,000 people nationwide, thank you for your courtesy here today, for your patient attention to our viewpoint and for considering our request to support H.R. 237 both in committee and before the House of Representatives.

Thank you.

Chairman ANNUNZIO. Thank you, Mr. Sheppard.

Mr. Fletcher.

STATEMENT OF JACK FLETCHER, NATIONAL LEGISLATIVE COMMITTEE REPRESENTATIVE, AMERICAN COLLECTORS ASSOCIATION

Mr. FLETCHER. Thank you, Mr. Chairman, members of this subcommittee. May I add that the years have been kind to you because you actually do look younger, and Mr. Prins just mentioned the other day to me I am a little more handsome than I was 8 years ago.

Some of you may remember about 8 years ago I stated to this subcommittee that like so many old timers from Tennessee, I believe 100 percent in this great American Congress, and I mean every word of it.

As you know, the people of America use the field of credit to maintain the highest standard of living in the world today. In doing so, situations come about that create a certain percentage of bad debts, which in order to hold down the cost of merchandise and services must be recovered in the right way.

The testimony presented by the American Collectors Association, Inc., will show to you this group of professional collectors is doing everything possible to comply with the Fair Debt Collection Practice Act which we feel is a great move in the right direction.

Mr. Chairman, people in our industries operate small business and many, many have spent many years of hard work to do a good job for their client credit grantors and to comply with the laws of the land.

So we feel that this industry deserves, like the consumers of America, to be treated fairly. We, like so many cosponsors of H.R. 237, are 100 percent in favor of this legislation, because it will provide that all the players play by the same rules.

Thank you, Mr. Chairman, members of the subcommittee for allowing us this opportunity to present our support for H.R. 237.

Thank you.

Chairman ANNUNZIO. Thank you, Mr. Fletcher

Mr. Walter Kurth, president of the Associated Credit Bureaus, Inc.

STATEMENT OF WALTER R. KURTH, PRESIDENT, ASSOCIATED CREDIT BUREAUS, INC., ACCOMPANIED BY D. BARRY CONNELLY, SENIOR VICE PRESIDENT

Mr. KURTH. Accompanying me is senior vice president D. Barry Connelly, and director of Government relations, Steve Fier. We appreciate the opportunity to participate in these hearings and present testimony on behalf of our members.

ACB, as we are known in the industry, is a trade association representing 1,100 collection offices throughout the United States, and 80 percent of those offices are also affiliated with our credit reporting division.

Since 1976 we have supported your efforts to enact a fair debt collection practice act to protect consumers from unfair, deceptive third party collection practices. We believe the law has worked well with one exception. One class of third party collectors, attorneys, have not been required to provide the protections embodied in the Fair Debt Collection Practices Act.

We must ask ourselves the following questions. Is it good public policy to permit attorneys collecting debts to use threats of violence or harm to the person, his reputation or property? Is it good public policy to allow lawyers collecting debts to communicate with the debtors employer or neighbor or other third parties concerning the consumer's economic problems? Is it good public policy to permit an attorney collector to continue communications with the debtor after the debtor has requested he cease such communications? Is it good public policy not to require attorney collectors to provide an initial validation of a debt notice? Or is it good public policy not to require lawyers attempting to collect debts to revalidate the debt and to mail certain figures to the consumer while a non-lawyer collector must do so? Obviously the answer to these simple questions is quite clear. It is not good public policy.

The attorney exemption in the Fair Debt Collection Practices Act also raises serious competitive issues. ACB members believe in competition and they are willing to compete so long as the cards aren't stacked in favor of one segment of the industry.

All Congress has to do is to pass H.R. 237, the result would be a simple one. All those engaging in third party debt collection would play by the same rules and consumers would be afforded the same protections regardless of whether the person is an attorney or not.

Who would benefit from the passage of H.R. 237? It is clear consumers and the marketplace as a whole would benefit. Who would suffer if H.R. 237 is enacted into law? No one. No, not even those lawyers currently taking advantage of the loophole, because H.R. 237 doesn't prohibit the legal profession from engaging in the activity of debt collection. It merely requires them to treat consumers in the same manner that non-attorney collectors treat consumers.

The best evidence of the need for change are the ads of law firms which say one of the factors making their services more attractive than the services of a collection agency is the fact that they are exempt from the Fair Debt Collection Practices Act, words that clearly imply to a client, we are not shackled by consumer protection.

One last point. The Federal Trade Commission has suggested each factual situation where a law firm engaged in collection activities should be examined on a case-by-case basis. We do not understand why the FTC believes that its staff can determine which attorneys are under the law and which attorneys' activities fall within the law or outside the law.

The FTC seems to believe, as you and we do, that attorney collectors should be treated the same as third party collectors. But then the Commission seems to elevate an elite, unidentified group of attorneys above the law and claims they should be exempt from the consumer protection provided by the FDCPA. We don't follow that logic. Either you are or you are not collecting a debt for another person.

Mr. Chairman, a rose is a rose by any other name. As you stated last year, the act is intended to protect consumers by regulating conduct. The test for applicability of the act should not be on the party, but on the activity. Mr. Chairman we agree, ACB supports H.R. 237 without qualification and urges swift congressional approval.

[The prepared statement of Mr. Kurth follows:]

Associated Credit Bureaus, Inc.

STATEMENT OF WALTER R. KURTH
PRESIDENT OF ASSOCIATED CREDIT BUREAUS, INC.

ON

H.R. 237 - A BILL TO AMEND
THE FAIR DEBT COLLECTION PRACTICES ACT

Before the Subcommittee on Consumer Affairs and Coinage
of the
Committee on Banking, Finance and Urban Affairs

United States House of Representatives

Washington, D.C.

Tuesday, October 22, 1985

16211 Park 10 Place • P.O. Box 218300 • Houston, Texas 77218 • (713) 492-8155

Mr. Chairman, and members of the Subcommittee on Consumer Affairs and Coinage, I am Walter R. Kurth, President of Associated Credit Bureaus, Inc. May I express, on behalf of our association, appreciation for this opportunity to present testimony at this hearing.

ACB, as we are known in the industry, is a trade association representing over 1,100 collection service offices in the United States. Approximately 80 percent of these offices also hold membership in the credit reporting division of our association.

Mr. Annunzio, the record is clear, ACB has supported your efforts dating back to 1976 to enact a fair debt collection practices law which equitably balances the rights of consumers with the rights of creditors who have reasonable expectations of payment for goods or services rendered. We believe that the law which went into effect in March of 1978 has served the country reasonably well over the last seven years with one major exception, an exception ACB warned this committee about in our first testimony on April 6, 1976. That exception, Mr. Chairman, is Section 803 (6) of the Fair Debt Collection Practices Act which exempts attorneys from complying with the provisions of the Act.

The attorney exemption has created two specific issues which must be addressed by the Congress. We believe that your bill, H.R. 237, addresses and resolves both issues.

The first issue, is the matter of public policy and Congressional intent in passing the Fair Debt Collection Practices Act. As this subcommittee knows, Congress enacted the Fair Debt Collection Practices Act to protect consumers from a host of unfair, deceptive and harassing third-party debt collection practices. However, history shows that consumers have not been protected as the Congress intended. One class of third-party collectors, attorneys, have not been required to provide consumers with the protection embodied in the Fair Debt Collection Practices Act. As currently written, and interpreted, the Fair Debt Collection Practices Act allows the legal profession to engage in tactics that if employed by non-attorney collectors would present a prima facie violation of the statute.

Mr. Chairman and members of the subcommittee, we must ask ourselves the following questions:

- Is it good public policy to permit attorneys collecting debts to use threats of violence or harm to the person, his reputation, or property?

- Is it good public policy to allow lawyers collecting debts to communicate with a debtor's employer or neighbors or any other third person about the consumer's economic problems?
- Is it good public policy to permit an attorney collector to continue communications with a debtor after the debtor has requested that he cease such communication?
- Is it good public policy not to require attorney collectors to provide an initial validation of debt notice?
- Is it good public policy not to require lawyers attempting to collect debts to revalidate the debt and mail certification to the consumer while a non-lawyer collector must do so?

Mr. Chairman, the answer to these and similar questions is quite clear---it is not good public policy to permit attorneys collecting debts to engage in such practices just as it is not good public policy to permit non-attorney collectors to engage in such tactics.

In addition to the numerous public policy concerns surrounding this issue, the attorney exemption in the Fair Debt Collection Practices Act raises serious competitive issues. As members of the House Banking Committee you are intimately acquainted with the concept of a "level playing field"---it is a term ringing through the board rooms of financial service institutions around the country. Its meaning is quite simple; American free enterprise companies want to compete so long as the cards aren't stacked in favor of one segment of an industry.

Our message is no different; our membership wants to continue to provide collection services as it always has without being at a competitive disadvantage in the marketplace. While we all know that it is quite difficult to create such a level playing field for some businesses, it is not all that difficult to create a level playing field for the collection services industry. All Congress has to do is pass H.R. 237. The result would be a simple one---all those engaging in third-party debt collection would be playing by the same rules and consumers would be afforded the same protection regardless of whether the collector is an attorney or not. If this result is unfair then we must re-examine the concept of fairness.

Who would benefit from the passage of H.R. 237? It is clear that consumers and the marketplace as a whole would benefit. Who would suffer if H.R. 237 is enacted into law? No one, not even those lawyers currently taking advantage of the loophole because H.R. 237 doesn't prohibit the legal profession from engaging in the activity of debt collection, it merely requires them to treat consumers in the same manner non-attorney collectors treat consumers.

This committee has heard testimony from lawyers who do collection business and who readily admit that compliance with the FDCPA is not an unusual burden. At the same time, the best evidence for change is probably those law firms who advertise to potential clients that one of the factors making their services more attractive than the services of a collection agency, is the fact that they are exempt from the FDCPA. Words that clearly say to a client --- "we are not shackled by consumer protection of the FDCPA."

One last note. Last year a witness testifying on behalf of the Federal Trade Commission suggested that each factual situation where a law firm engages in debt collection activities should be examined on a case by case approach. In our view, the case by case approach recommended by the Federal Trade Commission would only serve to shed more confusion on the matter. As a matter of fact, a review of the question and answer portion of the hearing on H.R. 4617 with the Commission witness only serves to fortify the view that nothing short of an outright repeal of the attorney exemption will clarify the law in this area.

We simply do not understand the Commission's belief that its staff can determine which attorneys activities fall outside the exemption, and which attorneys' activities fall within the exemption under the law.

The FTC seems to believe, as you and we do, that attorney collectors should be treated the same as third-party collectors, but then the Commission seems to elevate an elite, unidentified group of attorneys above the law and claim they should be exempt from the consumer protection provided by the FDCPA. We do not follow that logic. Either you are or you are not collecting a debt for another person.

Both public policy and competitive concerns dictate that the terms of the Fair Debt Collection Practices Act be applied to all collectors regardless of whether they are attorney collectors, non-attorney collectors, attorneys collecting a debt on behalf of a client or attorneys operating a traditional debt collection business---Mr. Chairman, a rose is a rose by any other name. As you stated last year, "The act is intended to protect consumers by regulating conduct...the test for applicability of the Act should not be on the party but on the activity". Mr. Chairman, we agree!

A review of the hearing transcript on H.R. 4617 clearly indicates that this subcommittee has substantial evidence of attorney collection agency activity. If nothing is done now to close this loophole, the loophole will only grow larger as more lawyers attempt to take advantage of it. Mr. Annunzio, ACB supports H.R. 237 without qualification and urges swift Congressional enactment.

In conclusion, we commend you and the members of the subcommittee for holding this hearing on this important piece of legislation and again thank you for the opportunity to testify. I would be pleased to answer any questions.

Balyeat Law Offices, P.C.
A Professional Corporation
Bancroft-Sussex Building
704 West Sussex
Missoula, Montana 59801

H. John Balyeat
Attorney-at-Law

Legal Department (406) 721-2841
Collection Department (406) 721-2846

April 11, 1985

To Whom It May Concern:

We are pleased to offer our collection services to you upon the following recommendations:

1. We are experienced in collection work and our office is structured to handle all your collections and related needs:

A. We have handled a large volume of collections for approximately ten years.

B. We have a complete collection department with a full-time collections manager and three full-time legal assistants to handle your accounts. If you have any questions regarding specific accounts you may call us for an immediate, complete status report on any account. Just ask for [illegible] (collections manager) or the following legal assistants:

Walt — Debtors' last names A-G
Kelly — Debtors' last names H-P
Mary — Debtors' last names Q-Z

C. Our collection department performs all those functions performed by collection agencies but with direct in-house legal supervision and lawyer clout.

D. As an attorney emphasizing collections, I can keep you appraised of all the latest laws effecting creditor-debtor relations including Federal Truth in Lending laws, state usury laws, state laws on legal interest computation procedures, insurance laws, worker's compensation provisions, medicare and medicaid laws, and errors and omissions liability laws.

E. We can provide truth and lending disclosures, credit applications and personal guarantee forms at no charge to you.

F. We routinely perform all necessary skip tracing and all necessary asset checks. In this regard we have access to all city, county, state and federal official records; some of these records are only obtainable through specific legal procedures. In addition, we have extensive in-house reference files including a credit reporting terminal and access to any other information gathered by credit reporting agencies upon payment of a nominal fee. Our files are, of course, totally confidential and any information on debtors therein is not for sale to other collection agencies or firms nor other creditors, who may have claims against the same debtor.

2. There are many advantages to our collection services over collection agencies:

A. Collection agencies are governed by the Fair Debt Collection Practices Act which requires that suit be filed in the county of the debtor's residence. As an attorney, I am exempt from this Act, allowing me to file suit where the debt was to be paid, i.e. the county of the creditor's place of business. This can save delays in filing suit, logistics problems in prosecuting the suit, and ultimate collection of the account. We do not have to refer your accounts to other counties which usually involves fee splitting and further delays and expenses, including travel for attorney and witnesses, to other counties in the event of trial or other court hearings.

B. Even though the debtor does not have the present means to pay your account, [illegible] secured; ultimate collection is more probable.

C. As an attorney, I can handle legal issues, e.g. when the state is involved, or an insurance company is involved, or third-party claims by the debtor are a possible source of payment.

D. As an attorney, I can make legal decisions as to all possible parties who may be legally liable for the debt, whether individuals, partnerships or corporations.

E. As an attorney, I know when and how to "pierce the corporate veil", where it may be possible to obtain liability to individual owners.

F. You should receive an increase in recovery percentage of collection from just having the debtor being contacted by a law firm.

3. Our rates and other program benefits compare favorably with other collection services, while providing a more professional format and propriety to the collection of your accounts. We have two basic rate programs at your option:

A. 30% before suit is filed, 45% after suit is filed, and you will receive a monthly work report and statement which itemizes out-of-pocket expenses to be reimbursed by you;

OR

B. 33 1/3% before suit, 50% after suit with all costs deferred and no monthly work report or statement.

4. For those of you who do not want your name in the "green sheets", we can obtain a legal assumed business name on your behalf to act as a party Plaintiff for filing of lawsuits and other collection efforts.

5. It may make it easier to turn over accounts to us and to keep your records consistent if you fill out one of the attached legal assignments for each account you want to turn over to us for collection; attach a copy of the statement, and drop it in the mail; you may desire to retain a photocopy of the assignment with your records on each account assigned.

6. The collectibility of accounts seems to be directly related [illegible] don't delay filing suit if pre-suit collection efforts are not successful. Once suit is filed, I use every legal means to enforce the debt, even if non-routine or innovative legal methods are necessary. This fact, together with my personal reputation as a tenacious collection attorney, I believe results in a higher collection rate than my competitors. Exact figures on success rate of any collection service would be mere conjecture due to confounding statistical variables.

7. For accounts turned over within 100 days of the last charge

We offer a free pre-collect system featuring a demand letter on our law office letterhead prepared and sent by our office. The notice is sent within one business day of receipt in our office of the account. If an account is paid in full within ten days, we will automatically drop it from our system with no charge for our services. If the account is not paid in full within ten days, we will automatically begin collection procedures under our existing percentages.

Quite often accounts become uncollectible because too much time has elapsed before being turned over for collection. This free ten-day precollect notice will help minimize time loss and allow you to recive the full benefit of your accounts.

8. Though our services must be paid for in some fashion, we receive no compensation whatsoever for our services unless the account is collected. Only upon actual payment does an account result in cash flow to your business. In the final analysis, the only good account is an account actually collected.

I appreciate your time in reading this prospectus and sincerely say that we desire to be of service to you. If you would like any further information, such as how to turn over an account, please do not hesitate to contact me or my collections manager, Cindy.

Sincerely,

H. John Balyeat

HJB/cls

H. JOHN BALYEAT, President
Attorney-at-Law

CINDY LEE GAUMER
Collections Manager, Paralegal

Balyeat Law Offices, P.C.
A Professional Corporation

704 W. Sussex
Bancroft & Sussex
Missoula, Montana 59801

Legal Dept. (406) 721-384
Collection Dept. (406) 721-3841

Chairman ANNUNZIO. Mr. Kurth, I thank you for your excellent statement.

Mr. Connelly, you are a member of the Texas Legislature; is that correct.

Mr. CONNELLY. You have a whole lot of people here who are in the legislature apparently, Mr. Annunzio. I would also point out to you not only am I in the Texas Legislature, Mr. Johnson has served in the Minnesota Legislature, Mr. Sheppard distinguished the South Carolina Legislature for a couple of terms.

Chairman ANNUNZIO. I am delighted to have all you lawmakers here.

Mr. CONNELLY. We are delighted to be here and see a real pro in action.

Chairman ANNUNZIO. I thank you very much.

Our next witness is Mr. Alan Fox, Legislative Representative, Consumer Federation of America.

STATEMENT OF ALAN FOX, LEGISLATIVE REPRESENTATIVE, CONSUMER FEDERATION OF AMERICA

Mr. FOX. Thank you very much, Mr. Chairman.

We appreciate the opportunity to appear here today, and we certainly appreciate your leadership on providing rights and protections for consumers and sponsorship of the bill that is the subject of the hearing today.

CFA is the Nation's largest consumer advocacy organization, with a membership of over 200 national, State and local consumer, rural, labor, cooperative, senior citizen and other groups that together have over 30 million individual members.

We support speedy passage of H.R. 237 as a matter of consumer protection and competitive equity. Since 1977, the Fair Debt Collection Practices Act has provided consumers with a variety of protections against specific unfair and abusive techniques used to collect debts. The act has worked, and it has worked well. But the act's exemption for attorneys has left some consumers without the rights and protections Congress intended them to have. Evidence is mounting that the exemption has been deliberately used to evade Congress' intent to outlaw use of the techniques enumerated in the law. The result is as inequitable to those who have complied with the law as it is unfair to consumers: Two debt collectors may be subject to two very different standards, solely because one is an attorney and one is not.

This distinction between regulated debt collection agencies and unregulated attorneys acting as debt collectors is inequitable on its face. We can conceive of no legitimate policy rationale for providing or denying consumers with legal protections based entirely on whether an attorney is involved. There should be no need to show that this distinction has been used to deprive some consumers of their rights or that it has been used to evade Congress' mandate. Yet there is, in fact, clear evidence that some attorneys are using their status for the express intent of providing debt collection services unregulated by the law and that some debt collectors are hiding behind the shield of this provision—a shield which may be only as thin as an attorney's letterhead—to intentionally commit practices which Congress has found to be in violation of consumers' rights and contrary to public policy.

Attorneys are holding themselves out as debt collectors. They do so in the Yellow Pages, in letters to prospective clients and in printed pamphlets. Some specifically state that their debt collection services will allow them to engage in practices prohibited by the act. The exhibits submitted by the American Collectors Association contain clear examples of deliberate efforts by attorneys to use their exemption to avoid compliance with the law, and other exhibits just as clearly demonstrate that attorneys do not simply promise potential clients that they will act in ways not permitted by the law.

They actually do engage in practices which Congress has determined should not be permitted. For example, a collection agency may not threaten legal action which, in fact, it is not entitled to take, but an attorney, on attorney's letterhead, with all the authority and credibility which that letterhead and the title of attorney convey, may make such a threat. We submit that consumers are under far more duress from an attorney improperly threatening legal action than from a debt collection agency committing the same practice. Yet only the agency is now prohibited from engaging in this form of harassment.

It is important to close off this loophole in the law. We are pleased so many Members of Congress have recognized the inequity imposed by this loophole. We would also urge you to investigate the activity of in-house debt collection activities. These are also exempt from the act—apparently in the belief that businesses which conduct their own efforts should not be required to meet the standards. However, many large and medium-size businesses have their own debt collection offices or divisions that engage in conduct which, if engaged in by regulated agencies, would be in violation of the act.

I spoke with the officers of one county consumer protection agency in the Washington area, in Fairfax County, VA. They told me that they have very few consumer complaints about the debt collection practices of regulated debt collection agencies but have ongoing problems with in-house operations. In many cases, these operations engage in harassment and threats when there is a legitimate dispute about the amount or existence of the debt. Threatening letters and harassing phone calls of a nature which are not permitted by debt collection agencies are common practices of some of these in-house offices.

This one agency told me they have in their files five recently closed cases involving threatening letters sent by one health spa, three cases in which a hospital sent letters threatening to ruin consumers' credit ratings and a case involving telephone harassment by the debt collection department of a major national retailer. These are only a few of the cases recently investigated in just one county.

We request permission to submit some of these examples when we receive clearance from this agency to provide them. They want to delete some information in order to protect the privacy of the individual consumers involved, but they expect to provide us with those copies later this week, and we would like permission to submit these for the record. We believe there is no legal or policy justification for allowing different debt collectors to operate under different standards.

[The information submitted is retained in the subcommittee file and is available from the subcommittee office.]

Mr. Fox. The result of the exemption provided attorneys and in-house debt collection operations is predictable. Debt collectors who wish to evade their legal responsibilities have used those exceptions as shields, and attorneys who wish to take advantage of an opportunity to compete unfairly with regulated agencies have rushed through the loophole. We urge swift elimination of these two loopholes to provide all consumers with basic fairness and to eliminate these unnecessary and inequitable distinctions between providers of debt collection services.

Thank you for the opportunity to appear here today.

[The prepared statement of Alan Fox on behalf of the Consumer Federation of America [CFA] follows:]

STATEMENT ON

"H.R. 237: AMENDING THE FAIR DEBT COLLECTION PRACTICES ACT"

BY

ALAN FOX
LEGISLATIVE REPRESENTATIVE
CONSUMER FEDERATION OF AMERICA

BEFORE THE CONSUMER AFFAIRS AND COINAGE SUBCOMMITTEE
HOUSE COMMITTEE ON BANKING
HON. FRANK ANNUNZIO, CHAIRMAN

October 22, 1985

My name is Alan Fox. I am Legislative Representative for the Consumer Federation of America (CFA). CFA is the nation's largest consumer advocacy organization, with a membership of over 200 national, state and local consumer, rural, labor, cooperative, senior citizen and other groups that together have over 30 million individual members.

We support speedy passage of H.R. 237 as a matter of consumer protection and competitive equity. Since 1977, the Fair Debt Collection Practices Act has provided consumers with a variety of protections against specific unfair and abusive techniques used to collect debts. The Act has worked, and it has worked well. But the Act's exemption for attorneys has left some consumers without the rights and protections Congress intended them to have. Evidence is mounting that the exemption has been deliberately used to evade Congress' intent to outlaw use of the techniques enumerated in the law. The result is as inequitable to those who have complied with the law as it is unfair to consumers: Two debt collectors may be subject to two very different standards, solely because one is an attorney and one is not.

This distinction between regulated debt collection agencies and unregulated attorneys acting as debt collectors is inequitable on its face. We can conceive of no legitimate policy rationale for providing or denying consumers with legal protections based entirely on whether an attorney is involved. There should be no need to show that this distinction has been used to deprive some consumers of their rights or that it has been used to evade Congress' mandate. Yet there is in fact clear evidence that some attorneys are using their status for the express intent of providing debt collection services unregulated by the law and that some debt collectors are hiding behind the shield of this provision -- a shield which may be only as thin as an attorney's letterhead -- to intentionally commit practices which Congress has found to be in violation of consumers' rights and contrary to public policy.

Attorneys are holding themselves out as debt collectors. They do so in the Yellow Pages, in letters to prospective clients and in printed pamphlets. Some specifically state that their debt collection services will allow them to engage in practices prohibited by the Act. The exhibits submitted by the American Collectors Association contain clear examples of deliberate efforts by attorneys to use their exemption to avoid compliance with the law. And other exhibits just as clearly demonstrate that attorneys do not simply promise potential clients that they will act in ways not permitted by the law. They actually do engage in practices which Congress has determined should not be permitted. For example, a collection agency may not threaten legal action which in fact it is not entitled to take, but an attorney, on attorney's letterhead with all the authority and credibility which that letterhead and the title of attorney convey, may make such a threat. We submit that consumers are under far more duress from an attorney improperly threatening legal action than from a debt collection agency committing the same practice. Yet only the agency is now prohibited from engaging in this form of harassment.

The evidence that attorneys have acted in ways contrary to the policies set forth in the Debt Collection Practices Act has been well documented by others, and we will not attempt to repeat that record. The evidence is sufficient that the Federal Trade Commission, which is charged with enforcing the Act, has in its annual reports cited evidence that "attorneys-at-law are becoming increasingly active in the debt collection area," and that "many attorneys active in this area appear to believe that the mere fact that they are licensed as attorneys exempts all of their collection activities. . . from the provisions of the Act."

We urge the subcommittee to investigate as well the activities of in-house debt collection operations. These activities are also exempt from the Fair Debt Collection Practices Act, apparrently in the belief that businesses which conduct their own debt collection efforts should not be expected to meet the standards of professional debt collection agencies.

Many large and medium-sized businesses, however, have their own debt collection offices or divisions that are every bit as professional as separate debt collection firms. They frequently engage in conduct which, if engaged in by regulated agencies, would be in violation of the Act. One county consumer protection agency in the Washington area, for example, told me that they have very few consumer complaints about the debt collection practices of debt collection agencies, but have ongoing and repeated problems with in-house operations. In many cases, these in-house operations engage in harassment and threats when there is a legitimate dispute about the amount or existence of the debt. Threatening letters and harassing phone calls of a nature which are not permitted by debt collection agencies are common practices of these in-house debt collection offices. In some instances, consumers have noted that harassment ceased when the in-house operation turned the collection effort over to a debt collection agency.

This county agency has in its files five closed cases involving threatening letters sent by one health spa, three cases in which a hospital sent letters threatening to ruin consumers' credit ratings, and a case involving telephone harassment by the debt collection department of a major national retailer. These are only a few of the cases investigated in just one county. We request permission to submit copies or descriptions of these cases for the record, after we are able to clear release with the agency, and we strongly urge the subcommittee to amend H.R. 237 to eliminate this exception as well as the attorneys' exception.

There is no legal or policy justification for allowing different debt collectors to operate under different standards. The result of the exemption provided attorneys and in-house debt collection operations is predictable: Debt collectors who wish to evade their legal reponsibilities have used those exceptions as shields, and attorneys who wish to take advantage of an opportunity to compete unfairly with regulated agencies have rushed through the loophole. We urge swift elimination of these two loopholes to provide all consumers with basic fairness and to eliminate these unnecessary and inequitable distinctions between providers of debt collection services.

Chairman **Annunzio**. Thank you very much for an excellent statement, Mr. Fox.

Our next witness is Mr. Leonard Abrams, representing the law firm of Berman, Fagel, Haber, Maragos & Abrams, representing the Commercial Law League of America.

STATEMENT OF LEONARD O. ABRAMS, PARTNER, BERMAN, FAGEL, HABER, MARAGOS & ABRAMS, REPRESENTING THE COMMERCIAL LAW LEAGUE OF AMERICA, ACCOMPANIED BY BENSON ZION, PRESIDENT

Mr. **Abrams**. Mr. Chairman, members of the subcommittee and staff, it might surprise all of you if I told you that I don't feel that attorneys are special people and that attorneys should not have to be fair to everyone, including debtors. I don't think anybody should be harassed or taken advantage of. In going through all of the material that I have been giving and in listening to all of the testimony, I have not heard or seen any specific complaints that have been made against attorneys that would relate to such a harassment of a debtor that should subject attorneys to be included in this act.

I have no objection to attorneys being on an equal footing with a collection agency if, in fact, they are acting as collection agencies and they are soliciting business. I don't think that they should be able to advertise for business saying that they are not subject to the act and gain an unfair advantage. And I would have no objection, and I don't believe that any attorneys should have that objection merely because they are attorneys.

I am concerned, however, with the possible effect that this might have in other areas of the practice of law that have not been brought out before this subcommittee or perhaps even thought of by this subcommittee. When you litigate for a client, there are things that you do that people on the other side are going to find offensive and may think that they are being harassed when actually all you are doing is following the law.

If I examine a debtor on a citation to discover assets and find that he has a job, am I precluded from telling him if he does not make some type of payment arrangement I can't garnish his wages or garnish his bank account? If I talk to him before taking legal action, am I prevented from discussing these things?

The paper that has been submitted with the exhibits by the American Collectors shows that there were letters being written by attorneys saying that a failure to discuss the bill would result in certain remedies that would be taken by the attorney on behalf of the client. Apparently, their only complaint is over the amount that is involved. The attorney does not have any control, or very little control, over whether or not the client wishes to pursue their remedy in a court of law. That is to be determined by the client.

Would this subcommittee put a limit on the dollar amount of a claim where a law can't say if this claim is not paid, a lawsuit will be filed or a lawsuit recommended? Is that going to be the determining factor? Is the determining factor to be in the language of the letter saying that if a judgment is entered against you, various steps may be taken? Is that to be eliminated?

I am concerned with the fact that this subcommittee and others feel that attorneys are not doing anything as far as regulating their own. Our State, the State of Illinois, has a very new and very active attorney registration and disciplinary commission, which is a body of the Supreme Court of the State of Illinois, the body that regulates the conduct of attorneys. There are rules and regulations that have been set up as attorney guidelines as to what attorneys may and may not do, and I would like you to see that this commission is distributing information as to how a complaint about a law is handled, inviting the public to submit to this regulatory committee any complaints that they may have about attorneys.

And a lot of complaints have been made about attorneys, but very few had anything to do with debt collection. I am concerned with the fact that an attorney, if he feels that he cannot communicate with a debtor prior to the institution of suit, will advise his client to file a lawsuit, which would clog up the courts even further than they are now clogged, and eliminate the most important aspect of the court system, which is justice delayed is justice denied.

At the present time, there are so many lawsuits that are filed that it takes a long time before a creditor gets an opportunity to have his case heard by a court and any action taken to collect the money that he is, in fact, justly owed.

Another problem that I find is the fact that the ACA in their material has indicated the great extent of educational materials that has, in fact, been prepared and submitted to their members to interpret this act. And I find that it is confusing upon first reading. It is more confusing upon second reading, and in giving this to other members of my firm, I have asked questions as to whether or not this would be under the act. It is very difficult to interpret everything that is contained there and how it would apply to the actual practice.

I find, in particular, a portion that says—where you could file a lawsuit. I think that the Supreme Court set rules saying where you can file a lawsuit. And I think that this would narrow some of the State laws as to where a lawsuit can be filed. I think that there is another thing that determines or helps determine one of the concerns about whether or not a claim is valid or not, a verification. Ninety-nine percent of all debt collection is done on a contingent fee basis, and I don't think lawyers are going to file lawsuits on a contingent fee basis unless they feel that the money is due and owing and that it is, in fact, a just debt, because they are not interested in wasting their time and going through this entire procedure to come up with a "not guilty" verdict.

Again, the Commercial Law League has suggested an alternative, and that would be that any attorney-at-law collecting a debt as an attorney on behalf of and in the name of the client in the course of providing legal services would be exempt except any attorney employing nonattorneys who bear primary responsibility for handling or processing debt collection.

This would, in fact, remove the, I believe, complaint of the people who are involved in the industry of the unfair competition, eliminate their exemption status so they could not advertise that they are exempt from this act and still not interfere with the professional practice of legal services.

I am again concerned with the fact that if debtors find out that there is a possibility that they could bring a cause of action for what they consider to be harassment, they could file suit in the court rather than go to a governing body and ask that it be investigated. This would then put the burden on a State court subject to interpret a Federal statute to find out whether, in fact, there was harassment or not harassment.

And it is interesting to note that the civil penalties that are provided for here say that additional damages, not exceeding $1,000, or in the case of a class action $500,000 or 1 percent of the net worth of the debt collector, can be taken if the suit is filed by the consumer. However, if the court finds that the consumer had no just cause to bring this action in the first place, all the attorney could get would be attorneys fees and costs. So I don't think that that is fair either.

I think that if the exemption is just broadly removed, it would create so many problems for the courts, for the lawyers, for creditors as to really be something that should be considered in great depth before this action is taken. I think that the lack of specific complaints against attorneys violating the act, even without their being forced to comply with the act, is indicative of what was said before, that if it is not broke, don't fix it.

I think that lawyers as a group act professionally in the conduct of their practices, and that this is not necessary. It would create more problems than it would attempt to cure.

Thank you for your patience and time.

[The prepared statement of Mr. Abrams follows:]

COMMERCIAL LAW LEAGUE OF AMERICA

Statement of Leonard O. Abrams
for the
Commercial Law League of America
before the
Subcommittee on Consumer Affairs and Coinage
of the
House Committee on Banking, Finance and Urban Affairs
October 22, 1985

Re: H.R. 237 To Eliminate The Attorney Exemption
Under the Federal Fair Debt Collection Practices Act

I am Leonard Abrams, a partner in the Chicago law firm of Berman, Fagel, Haber, Maragos & Abrams, appearing today as a member of the Board of Governors of the Commercial Law League. Accompanying me is Benson Zion, President of the League. Both of us are engaged in the practice of law, including the collection of both commercial and consumer debts.

The Commercial Law League of America has about 5,500 members throughout the United States, about 85% of whom are attorneys engaged in the practice of law, many of them including in their practice the collection of consumer debts.

H.R. 237

The federal Fair Debt Collection Practices Act in section 803(6)(F) excepts from the definition of "debt collector":

> "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client".

H.R. 237 would completely eliminate this exception.

It is our understanding that the primary proponents of H.R. 237 believe that some attorneys employing non-attorneys in the collection of consumer debts are engaged primarily in debt collection and are in effect operating collection agencies and should not be exempt from the FDCP Act. As indicated in discussion below, the Commercial Law League would not object to elimination of the exemption for such attorneys. We understand that it is the position of the Federal Trade Commission that such attorneys are not presently exempt.

We understand further that proponents of H.R. 237 believe that all persons engaged in "debt collection" should be subject to the FDCP Act. This raises broad problems because it would go beyond the exception for attorneys and presumably would require elimination of all of the present exceptions for specified classes of persons engaged in debt collection, including creditors. We believe that this is obvious "overkill", demonstrated by the fact that most of the complaints received by the F.T.C. about debt collection practices involve collection agencies.

Position of the Federal Trade Commission

We do not know what position the F.T.C. will take at these hearings; but we believe that the problem is put in good perspective by the statement in the Seventh Annual Report of the F.T.C. to Congress pursuant to the FDCP Act on March 27, 1985, stating:

> "As we have stated in previous annual reports, the Commission does not view this section as providing a blanket exemption for attorneys. The Commission's position, as set out in its Shaffner statement of June 28, 1983 (note 5), is that traditional debt collection businesses are subject to the ACt, regardless of whether they are owned by an attorney or publicly promote themselves as a law firm. However, in the Commission's view, those attorneys who engage in debt collection incidentally on behalf of clients for whom they regularly provide professional legal services are, and should remain, exempt from the Act's provisions. The Act's numerous affirmative requirements, designed to address the particularities of the debt collection business, would be inappropriate and unnecessarily burdensome if imposed upon attorneys who occasionally assist their clients in the collection of outstanding accounts. Furthermore, there is not a great deal of evidence suggesting that attorneys regularly engage in the type of debt collection practices that the Act was designed to prevent."

Further, a representative of the F.T.C., testifying at hearings before this Subcommittee in January, 1984 on the same proposal (then in H.R. 4617), stated that out of approximately 2,000 complaints regarding alleged violations of the act, only 32 involved attorneys (about 1.6%) and stated in response to a question:

> "..... the Commission staff does not receive substantial number of complaints or any other indications of widespread practices by attorneys which, if engaged in by an independent debt collector, would violate the act." (page 23 of hearings)

We noted that the F.T.C.'s Seventh Annual Report to Congress under the FDCP Act in March 27, 1985, referred to above, commented that the number of attorneys whose collection activity falls somewhere between that of a traditional debt collection business and the business of providing legal services continues to grow; that attorneys whose collection activities occupy this middle ground may be uncertain of the Act's applicability to their situations; and that, although the Commission's Shaffner statement clarifies their enforcemrnt position with respect to the exemption, uncertainty continues to exist; and the Commission recommends that Congress establish appropriate legislative guidelines.

An appropriate distinction on this problem may best be based on a distinction between "debt collection" and "legal services" and we discuss that below.

"Legal Services" in Connection With Collection of Consumer Debts

Many members of the Commercial Law League believe that the present exception for attorneys under the FDCP Act should be retained without further limitation, because attorneys already are subject to supervision and disciplinary action by state and local bar associations and are "officers of the court" as part of the judicial system. However, as indicated above, the Commercial Law League is not opposing a limitation on the exception so that attorneysemploying non-lawyers in debt collection and engaged primarily in collection of consumer debts would be subject to the Act.

There are four types of activity by attorneys relating to debt collection which should be distinguished:

(1) Where an attorney is engaged primarily in collection of consumer debts placed directly with the attorney by the creditor and employs non-attorneys for such debt collection activity, so as to be in effect operating a debt collection agency, the Commercial Law League does not object to subjecting such attorneys to the provisions of the FDCP Act.

(2) Where an attorney engages in debt collection incidentally on behalf of clients for whom they regularly provide professional legal services, the Commercial Law League believes, as recommended by the F.T.C., that such attorneys should remain exempt from the FDCP Act because many of its requirements would be inappropriate and unnecessarily burdensome.

(3) Where an attorney receives a consumer claim for litigation, from a collection agency or another attorney who has completed the regular debt collection activities, the League believes that all litigation related activity is clearly entirely a legal service not subject to the FDCP Act. Although claims frequently are forwarded to an attorney with instructions to proceed directly to suit, in many cases it is assumed that the attorney will make a final demand on the debtor before filing suit, to permit the debtor to avoid the expense of the litigation. We believe that such a final demand is part of the litigation process and that to consider such a demand subject to the FDCP Act would simply cause attorneys to skip that demand and proceed directly to suit. In this situation, we believe that it clearly is in the best interest of debtors to not subject a final demand by an attorney receiving a claim for litigation from a collection agency or another attorney to requirements of the FDCP Act.

(4) Where an attorney files claims on behalf of a creditor in an insolvency proceeding, it often is necessary to have certain communication with the debtor. We believe that all communication s by an attorney with a debtor in connection with an insolvency proceeding is a legal service which is not and should not be subject to the provisions of the FDCP Act.

Conclusions

The Commercial Law League has attempted to be responsive to the concerns of those who believe that some attorneys are engaged in the operation of collection agencies but claim exemption from the FDCP Act; but we have tried also to distinguish certain legal services related to debt collection which are not appropriately subject to the Act.

We believe that the Act could be clarified with respect to the attorney exemption in accord with recommendations by the F.T.C. if section 803(6)(F) were amended by adding the underlined language to read:

> "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client in the course of providing professional legal services, except any attorney employing non-attorneys who bear primary responsibility for handling or processing debt collection."

We appreciate the opportunity to submit these suggestions to this Subcommittee and would welcome the opportunity to provide any additional information that might be helpful.

Chairman ANNUNZIO. Thank you, Mr. Abrams, for your fine statement.

Mr. Sheridan.

STATEMENT OF ROBERT J. SHERIDAN, ROBERT J. SHERIDAN AND AFFILIATES

Mr. SHERIDAN. My name is Robert Sheridan. I am an attorney in the District of Columbia, Maryland, and Virginia. In the course of my practice, I handle a small percentage in relation to my practice of what we call debt collection matters against both consumers and companies who do not pay debts.

During that time, I think I have had considerable experience with all phases and all levels of the collection process. I want to thank the subcommittee for inviting me here today to testify.

In my hastily prepared statement, I may have made some inflammatory comments which I hope the subcommittee will disregard as being an 11th-hour submission to the subcommittee, and no one takes it personally. In a sense I have to analogize my appearance here to the light beer commercial, where Marv Thornberry at the end says to everyone, "I can't understand why they asked me to do this commercial." I feel that same way about my appearance today.

I think, in looking at the face of the proposed litigation, my position would be that if litigation—if the legislation is passed, it just merely raises the exemption and applies the original act term for term for attorneys, I think it will destroy the litigation process and cause more harm to consumers.

There are considerable discussions in my statement of the economic fallout that would affect all or a substantial part of the American economy from this. I think Mr. Roth pointed out earlier, first of all, if it is not broken, don't fix it, and, second, it is a very small percentage of people out there abusing this process, and these matters are more and more publicized. As consumers find they have even more loopholes to escape responsibility for payment of their debts, there is going to be complete refusal on the part of consumers to pay this.

In listening to the various witnesses who testified, I think everyone has some good points to show, but I find it somewhat hypocritical to hear collection agencies or representatives of collection agencies coming before this subcommittee and trying to support this legislation that brings the attorneys in when it is purely a monetary and business decision by them. The hypocracy of it all is that for years a large number of these firms now represented and have now been slapped on the wrist and taught by the associations how to properly collect debts have made their millions and established themselves in this country by the grosses of abuses which this Congress came here 10 years ago to correct.

Now they stand before you and try to, what I consider to be, foster a disastrous approach by Congress at this point. I think what needs to be done is Congress has to distinguish between certain types of attorneys and certain types of law firms and the types of approaches they use for collection. If the creditors of this country were encouraged to at an earlier and earlier stage advance their collection matters into the hands of attorneys who will then litigate these matters immediately, file suit and serve papers on the debtors before they have a chance to skip all over the country, this will eliminate chances for abuse by a collection agency or anyone else.

The problem I see is there are certain law firms around that stay away from the litigation approach entirely. They will get the matter and send letters and make calls and continue to harass the debtors. There are a number of law firms, as someone pointed out earlier, that have their own collection agencies built up, and all they do is use their letterhead to cover up for what is essentially another collection agency. My approach has been to get the matter into a responsible attorney's rights, one who has concern for the consumer's rights as well as debt.

I think the problem is that—I am not sure of the background of all the people here. I don't think anyone in this room who has at least testified so far has been through the legislative process and knows the difficulty of collecting from debtors. Congress has somehow chosen, and I think the intent behind this latest legislation is good, but I think it is the equivalent of cutting out someone's heart to take care of a sprained ankle. It is a small matter we are dealing with.

A point for point transfer of this legislation too will cause innumerable problems, and no one in this country will bother paying their debts. Just by—to back up a little bit, once litigation is filed, and one of the problems—well, there are several problems with the various terms here. I think in addition to distinguishing between debt collection firms and litigation firms that happen to handle debt collection matters, which is an important distinction to make, there also has to be a distinction—I think the appropriate method would be by a separate statute aimed at attorneys specifying exact abuses by attorneys sought to be protected.

I think we are going to get into an interpretative morass if it is passed in its current form. There are certain activities which an attorney has to perform which may give the appearance of being dishonest, for instance, in the area of locating debtors and debtor assets. Unfortunately, the original act limiting the number of jurisdictions where one can file suit against a debtor, if now including attorneys, would force a situation there would be no jurisdiction where you could file a lawsuit because certain jurisdictions do not have a jurisdictional basis, if you will, as to where the contract was signed.

It is a question of how you prove the contract is signed in the first place when a majority of applications are made by mail. If that burden of proof were passed on as an additional obstacle to attorneys, we would never get past step one in litigation. Once a case is in a court, the courts will offer all sorts of protections or all kinds of pretrial discovery mechanisms, voluntary and involuntary. Certainly in my practice, any time a debtor calls up and says "It is not the right amount, you sued me for $5,000; I owe $4,980," I don't think any attorney in the world is going to waste any time over $20.

The problem with this legislation now is all a debtor has to do to freeze up litigation for a year or two, who buys himself time to leave town and go into hiding, is to sit there and make a disagreement over 1 percent or less of the debt. There is no penalty for doing that. They can willy-nilly and say "Send me all the proof."

What the Congress overlooks here, I think, is that the majority of courts will require as part of the initial filing all documentation, statements of account, applications, contracts, whatever, that form the basis of the debt be attached to the original complaint. The debtor is advised from the day litigation is filed, this is assuming we are lucky enough to have a debtor not hiding behind closed doors, which probably is an accusation that would be justly applied to 75 percent of the debtors out there taking advantage of this kind of legislation, but assuming the debtor is served at that point with the papers, there are plenty of legal aid firms around, plenty of people in the courthouse that can tell him what to do.

If it is a simple matter of a slight variation of the amount, a late payment made to the creditor not reflected in the statement, these things can be resolved quickly by the attorneys who have no incentive to push this on. The problem is if litigators like myself are sitting here handcuffed by this type of litigation, we will literally not be able to file any lawsuits. The minute we file them, we are going to have to sit around and go through all kinds of convoluted proof procedures over a $10 difference on a $2,000 debt. Then after all—it would take me years to sit here and explain the various procedural obstacles one has to overcome just to get a judgment, and then attempting to execute.

And if one factors in the innumerable exemptions provided at the Federal and State level, it has literally become impossible to collect a debtee's fees if you want to do it honestly through litigation. There is too much consumer protection litigation out there, and it is not thought through. I am running out of wind, don't worry.

What I would suggest is the matter be defeated at this point. I think it should be carefully studied in the next few months in anticipation of the next session in the spring. I think we are pressed for time. No one has had a considerable amount of time to give this thing the attention it deserves. I think there should be a focus on a separate statute which says any attorney involved in collection, no matter what percentage of his business it is, you should list the various things you can't engage in. He should be able to advise a debtor he is going to file suit within 5 days or 10 days, and if there is no response—and I think most of the courts will require that attempt be made first.

The other thing I think has to happen is there is a naive belief I think among the sponsors of this type of legislation that debtors are honest and victimized people. The fact is these people are out there spending a lot of money they do not earn. If you earn $20,000 or not even earn that, and you are spending at a $40,000 a year clip, there is a lot of water being pumped into the economy. There is no way this thing can go on forever.

So I think the legislation has to be passed to limit the attorneys. I think there should be an easing of the burden in things like locating a debtor's assets or locating the debtor himself. I think the statute itself actually harms the consumer by requiring identification by the caller, for instance, because if the caller calls and says I'm an attorney, the neighbor is going to know the guy is in trouble; and if it is the debtor on the phone, the debtor is going to go through emotional stress because someone is calling him merely trying to find out where he is. That kind of thing—once you can find a debtor, he probably has all the exemptions in the world to protect him.

[The prepared statement of Mr. Sheridan follows:]

Statement of Robert J. Sheridan

This statement is provided in response to the invitation of the Honorable Frank Annunzio, Chairman, House Subcommittee on Consumer Affairs and Coinage of the Committee on Banking, Finance and Consumer Affairs, and in preparation of testimony to be given before the subcommittee October 22, 1985 at 10:00 A.M.

By way of background, I am an attorney at law licensed to practice in the District of Columbia, the State of Maryland and the Commonwealth of Virginia, with approximately eight(8) years active experience as an attorney. During this time, I have, in addition to the broadest range of leagal matters handled in my general civil and criminal practice, handled thousands of consumer and business collection matters, representing banks, credit card companies, loan companies, gasoline companies, hotel management companies, manufacturers and suppliers, construction companies, and various other commercial entities, as well as individual persons, who attempted to collect debts owed them by individuals or by other companies. As a result, I can profess a reasonable expertise in the areas of debt collection litigation and judgment enforcement(to the extent any still exists), the debt collection practices of other firms, and the severe adverse impact on the American economy caused by overly-broad, paternalistically protective consumer legislation(the proposed legislation being the latest in a series of steps to impending economic disaster).

The statements contained herein, while not quoting any specific statistics and related data, are true and accurate and will be, if I be given proper time to research and cross-reference the staggering volumes of information and records spread throughout the country, fully supported by the evidence to be obtained from the careful, extensive study this serious subject deserves.

For the protection of all consumers in this country, for the protection of the credit industry from collapse, and for the protection of the American economy from the inevitable results of the disastrous trends of ill-conceived consumer legislation, I would recommend that the bill (H.R. 237) in its present form be defeated. However, I would also recommend, because of the way some other law firms approach collections, that the committee focus on drafting a completely separate statute(s) aimed specifically at attorneys only, and more carefully specifying the exact practices to be prohibited.

The current Act, as applied to debt collectors/collection agencies, would, if wholly applied(or applied in any substantial part) to attorneys, cause a virtual paralysis of the legal and judicial system, would prevent the filing of any new lawsuits, and force relitigation of any and all pending lawsuits(even those where judgments have been entered after every conceivable protection was already afforded the Defendant debtor in the lawsuit and prior to the lawsuit). Further, it would(as has been the direct effect of all consumer protection regulation/strangulation) literally destroy(at best, gradually) the American economy by fueling the skyrocketing of interest rates, prices, and tax burdens of the individual consumer/taxpayer, cause further(at a geometrically accelerating rate) bankruptcies(by individuals and by family owned small businesses, etc. increased unemployment(as more and more smaller businesses, and then larger businesses, close down), family dissolutions, etc.(the very evils the original act sought to prevent), collapses of the American farms, and numerous similar economic fallouts.

While I have for years applauded and supported consumer protection legislation and a majority of "liberal" programs, debt collection regulation of the over-breadth of the original Act is a perfect example of misguided liberalism 1)not sufficiently pre-analyzed, 2)overly reactive and far exceeding the problem sought to be solved, 3) leading to some serious and undesirable results, 4)fostering the very social ills it expressly sought to prevent and 5)seriously injuring the very people it sought to protect.

There may be a tendency on the part of Congress to dismiss the problems cited herein as not being sufficiently prevalent to warrant action by Congress. However, if attorney collection activity is prevalent enough to warrant consideration of this bill, then the problems I cite are twenty(20)times as prevalent(though possibly covered up as explained below)because collection attorneys rarely get involved in more than a small segment of the collection matters in the country and only after months or years of collection activity by the creditor and one or more collection agencies(during which time the debtor has been thoroughly over-protected by the law, has had innumerable ample opportunities and extensions of payment schedules, and has, in most cases, paid little or nothing while buying time to skip town, change names, go into hiding, etc.). Meanwhile, the remainder of the consuming public pays his bills in the form of higher prices, higher interest rates, and, as will be explained below, higher taxes. When A gets away, B,C,D,etc., must pay for him. By the time the attorney gets involved, the cumulative damage to the American population and the economy has already been done, and with what little leverage the attorney has left these days, nothing can be done to help the creditor or its honest consumers.

Further, statistical information available to Congress from American companies may mislead Congress into thinking the credit delinquency rate is not very high. There are, after all, various accounting tricks used by companies(whether to impress its stockholders or to attract purchasers in this age of growing mergers and acquisitions) such as "reverse aging" of accounts and writing the accounts off on their tax returns. The tax write-off removes the debt from the listed delinquencies, and gives the company an appearance of greater stability. For those debts that they choose to leave on the books, they can play the aging game. For instance, if a debtor owes them $5,000.00, and has not paid in four(4) months, the account is aged at 120 days. However, if he pays in some minimal pittance payment, the account is then aged at 0-30 days. Even when the account is pursued by in-house collectors, the practice of "busting a payment" raises that collectors quota and gives the account the appearance of being current. To even avoid the account passing into the delinqency stage in the first place, companies will require such abysmally low monthly payments that debtors are enticed to keep a higher unpaid balance on which to compute interest. The problem these companies fail to realize is that all the interest in the world is useless if the debtor continues over-extending himself and the account becomes uncollectible. Greed and stupidity are by no means insubstantial factors that can be ignored here.

From one end of the credit extension process to the other, Congress may need to legislate intelligence by the pitiful fools that inhabit the business world. In the least, it must make certain creditor-protection practices mandatory, in order to overcome the sales-sales-sales fetishes and the fears that merely asking a customer for identification will send him to the competitor, and to overcome collective corporate stupidity. However, there is no reason to further reward the thieves of the world who have taken advantage of bungling businessmen/crusader Congresses of the past by making it virtually impossible for the companies to get back any of the money they gave away. It is, after all, the consuming public that will pay for these mistakes, and, without drastic action, the economy will collapse.

To re-stabilize the economy(or at least substantial segments thereof) this Congress(and those to follow) should concentrate on counter-balancing the deluge of consumer protection legislation with some reasonable form of "creditor protection/debtor responsibility" legislation(which in the end would be the purest form of "consumer protection"). The legislative reforms briefly outlined below will, if 1)given careful study and research and 2)enacted in some substantial part in a carefully balanced manner, achieve many of the goals of both Republicans and Democrats, liberals and conservatives, consumer advocates and corporate representatives. They will eliminate over 99% of potential credit collection abuses in this country. Equally importantly, they will have a substantial positive effect in reducing inflation and prices overall, reducing interest rates, spurring construction and other American industry, aid troubled farmers, etc., reduce individual tax burdens(at no loss in revenues and at no added burden to the corporations), consequently cutting deficit spending, reduce business failures and bankruptcies and create new jobs(or resurrect old ones), and generally re-stabilizing the economy.

Before I attempt to explain the economic fallout/destruction caused by overly broad and misguided anti-creditor legislation, let me point out that any attempt by Congress to regulate attorneys, at least in the present form of the bill, would be a gross violation of separation of powers between the legislative and judicial branches and would be an invasion of the state's right to license and regulate its attorneys through its courts and bar grievance commissions. Few exceptions exist to the historically sacred rules, except in the limited number of situations where a cause of action exists only by statutory enactment and the matter is handled in a tribunal that exists only by that same statutory enactment. Examples would be workmens' compensation cases and social security cases, and even there, only fees(quantity and procedure for receipt) are regulated, and there is no cross regulation between the federal courts/Congress and the state courts/legislature. These cases have an equal or greater impact on interstate commerce, and often are interstate matters, yet Congress has rightfully maintained a hands-off posture.[1]

I can think of no example where a legislature(even when within the same jurisdiction as the court) attempts to substitute its judgment (which at best would be patently amateurish even if at least some of the legislators had at least the minimal qualification of possession of a law degree)for that of trained, experienced attorneys in the representation of clients and for that of the watchful and wise courts and bar grievance commissions. If an attorney ever hints at doing anything unlawful or even remotely questionale/unfair in the course of litigation, judges will jump in to protect the Defendant/Debtor. And certainly every debtor, regardless of the purity and decency of the attorneys' conduct, will willy-nilly file bar complaints with grievance commissions(who invariably have a "guilty until proven innocent beyond a shadow of a doubt and we don't even have to specify what the charges are" approach to even the most obviously frivolous complaints filed by any lunatic that stumbles in off the street). Congress should not add any further to the "dictatorship of the deadbeats" by removing whatever precious little leverage any attorney might have.[2]

Even assuming Congress can invade the state Court's/grievance commission's province, there would be innumerable and insoluble problems in applying the rigorous prohibitions and dictates of FDCPA to attorneys in the litigation context. How, for example, would one handle the situation where (after months or years of collection activity during which a debtor has had repeated opportunities to challenge the validity of the debt) suit is filed for the $5,000.00 a debtor owes, and he disputes it in any way for $10 or so. Should the creditor then be immediately be burdened with producing innumerable monthly statements from the beginning of time, and microfilm copies of old vouchers(and, as some "brilliaint liberal" judges have insisted, a handwriting expert or experts for each of the vouchers signed by the debtor and innumerable friends to whom he lended his card(with the intention of cutting off authorization and limiting to $50.00 the costs of the innumerable goods purchased by the friend)? Should all litigation cease, giving the debtor even more time to skip town, secrete assets, etc.? Should the courthouses be overstuffed with the reams of paperwork the attorney would have to turn over, just for some imagined $10 difference??

Lawyers(at least those of us who have to work for a living) do not want to waste time over such trivial matters, and if litigation were allowed to continue, could easily just give the debtor the requested credit and stipulate damages, or have the debtor provide copies of recently cancelled checks, etc. However, if the debtor knows he can perpetually stall matters, he will. The legal system has more than enough mechanisms for the debtor to procure from the creditor necessary defensive information without Congress paralyzing the courts.

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[1] Ironically, no attempt is made to regulate bankruptcy attroneys' fees, in the ultimate(and most patently ludicrous)statutory-only cause of action and tribunal. This will explain the rash of bankruptcies solicited by these attorneys who get $1,000+(cash only) from debtors to advise them to run up their debts, wait four(4) months, file bankruptcy and avoid paying the hundreds of thousands of dollars they ran up. Meanwhile, the attorney reports only $200 fees on the bankruptcy petition and on his tax returns.

[2] On innumerable occasions, those "poor victimized debtors" Congress has for years over-protected have threatened to murder me just for filing a lawsuit, have attacked me in my office and in courthouses, have spat on me, and(and these are the best of them) cursed at me with every profanity known to mankind. Criminal prosecutions, while appropriate, have been infeasible(court backlogs, liberal judges, reverse-racist juries, etc.) and civil liability, once established, is uncollectible. After all this abuse, I don't say a word, but even though I don't, any debtor can accuse me of same, stall the collection for months or years, and, assuming I can at great expense get the debtor's suit dismissed AND get a judge to assess

Unfortunately, no one is concerned about the total lack of judicial mechanisms by which the creditor can locate and serve the debtor in the first place, and at some point determine whatever assets the debtor might have. And no one is concerned that the blanket state and federal exemptions, and the retroactive exemptions of bankruptcy, make it virtually impossible for any creditor to collect any debt. Again, debtor goes scot-free, consumer/taxpayer pays.

And if Congress is so eager to invade the historically and constitutionally sacred province of the states and their courts, might it also want to consider an even trade in the form of a waiver of Congressional immunity, the speech and debate clause protections, and control over various political and social issues?

Even assuming attorney conduct is a proper subject for Congressional regulation and oversight, Congress must first be made painfully aware of what transpires long before the attorney even gets involved in that small percentage of cases that they eventually handle. First of all, everyone seems to miss the point that the debtor has already had the creditor's money for a very long time, and probably never intended to repay it. Yet at every juncture of the process, the burden(already overwhelming before factoring in consumer protection legislation) is perpetually upon the creditor. There is virtually nothing in any state, federal or local law which even remotely requires any responsibility by the debtor to re-pay or even be remotely truthful(even if supposedly under oath).

Creditors invariably give the debtor innumerable time extensions, eventually refer the matter to collection agencies(who take anything they can get, forced into submission by Congressional regulation, from a debtor who could fully pay off immediately but knows he can manipulate his Congressional "license to steal" and indefinitely postpone payments while buying time to skip town, hide assets, etc.). There is never a penalty to the debtor, even under the FDCPA's token provision for attorneys' fees/costs on dismissal of an FDCPA suit by debtor.

Eventually an attorney might get involved, but can't locate the debtor, (and even the act without inclusion of attorneys prevents effective location), let alone find him at the door to serve court papers. And since the Act's limitation on forums invariably conflicts with state procedural rules, the places where an attorney can file suit is one or none.

Debtors can go into hiding for several years, then magically re-appear somewhere, show some previously non-public indicia of address, and bar suit with the statute of limitations(tolling provisions are so limited that any debtor can get around them).

Let state procedural rules and the full faith and credit clause of the Constitution, with their innumerable protections for Defendants/Debtors control, lest all courts be eliminated as eligible forums. and no debt ever be repaid.

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attorneys' fees against the dismissed debtor/complainant, they'd be impossibl to collect(the debtor couldn't even pay the original debt, and I'd be just one more creditor handcuffed by Congress).

Then the creditor's attorney, if one of the lucky few to find the debtor after his jurisdiction hopping and hide-and-seek tactics, has to go through all kinds of expensive maneuvers to serve the court papers, then has to wait months or years to get a court date(the debtor makes no payments in the meantime, and the rest of the population has to make up for it), then has to overcome incredible burden of proof obstacles, and someday gets a judgment but usually for a fraction of what debtor really owes.

And a judgment is worthless if one can't locate assets(impossible given Congressional restrictions, and post-judgment asset examinations, (supposedly under oath, but never on the witness stand and never recorded, and if by remote chance the debtor truthfully describes assets, they are thoroughly dissipated before he leaves the courthouse, or at least by the time attachments can issue). And if the attorney gets extremely lucky (chances equivalent to winning "LOTTO" or "MEGABUCKS" but returns much smaller) and finds the asset and attaches it, blanket exemptions wipe out the attachment. Curiously, the debtor can repeatedly raise the same exemptions in every lawsuit filed against him by all his creditors, even exempting cash despite thousands held elsewhere, need never disclose his other assets, let alone substitute them to satisfy the debt. And then the debtor can always file bankruptcy within ninety(90) days and reclaim whatever assets slip away, once in a blue moon, non-exempted.

In a nutshell, there is no longer any such thing as debt collection in this country, only a"debtor dictatorship" wherein the debtor pays, if at all, whenever he pleases and in whatever amount he pleases. The only debtors that pay are those that are new to the "game" and don't yet know the ropes(although the legislatures and courts are doing their best to teach them). While the legitimate collection agencies and the legitimate collection attorneys carefully adhere to the laws and the ethics codes, the "maverick" and "outlaw" collectors continue to thrive, undetected by the state and federal governments, and preying on the innocent who don't know any better. And an ever-increasing majority percentage of debt in this country goes unpaid.

In case anyone in Congress is about to nominate himself for a hero's button for further crippling the only remaining hope for even minimal debt re-payment in this country, let me point out that as the unpaid and uncollectible debts cumulate in effect, the creditors must pass on losses to stay alive(at least temporarily until inevitable economic death), and can do so in a limited number of ways:

1)raising prices(if a merchant lender)

2)raising interest rates(any lender)

3)refusing credit to otherwise worthy applicants

  a)not enough funds to lend

  b)any available funds reserved for the powerful corporate borrowing elite(if even they can borrow), and never for the honest consumer trying to buy a car, a home, etc., or send his kid to college

4)write off the debt on their tax returns

Obviously the consumer is victimized, and by the very laws which purported to protect them. Numbers 1,2,and 3 obviously injure the consumer, and when corporations reduce their tax payments(while simultaneously raising prices and rates), and thus the revenues to the government, individual tax liabilities rise(and/or the deficit increases).

Again, the prevalence of the problem is greater than it may appear, and since years usually pass before economic effects of legislation and government action are felt, we may be just hitting the tip of the iceberg. If it has not hit the economy sufficiently to warrant immediate action to reverse the effects of the regulation/strangulation trend, it is a time bomb ticking away and waiting and looking for the worst time and place to explode.

And consider the people first affected by the ripple effect of higher prices/higher interest rate pass-ons. As companies increase their prices, the lower classes of economic society are priced out of the consuming market. The more localized the creditor's business, the more quickly this happens, since the localized creditor(e.g., Main street Hardware) cannot spread the necessary price increases over the national population as can a national creditor(e.g., Sears Roebuck). As the inner city consumers are priced out, the localized creditor closes shop, and soon thereafter the national competitor sees its inner city operation as a loser and moves/merges the operation with an existing suburban location. So the poor, honest inner city dweller must drive from the city to the suburbs(assuming he can own a car, with the price of gasoline, cars, etc., and the interest rates on car loans) for a $5.00 tool to work on his car or house, all becasue his neighbors have all robbed the system behind the shield of "consumer" "protection" legislation.

Soon more and more of the smaller localized businesses begin failing, for they can't collect on their credit extensions, and can't make a sale without extending credit for fear of losing the sale o the larger competitor who can absorb the bad debt a bit longer.

Meanwhile, their suppliers can't collect from them, for they've been forced to fold or go bankrupt, so the suppliers drift toward bankruptcy.

As this process continues, thousands of inner city jobs are lost, and these now unemployed workers begin defaulting on their credit obligations, and slide into bankruptcy and into divorce court.

And the cycle continues to escalate, despite possible(but deceptive) statistics to the contrary. One need only look at the rise in bankruptcies and divorces and similar crises, and at the unemployment rates on the more depressed areas. Play all the tricks one wants with labor "statistics" to cover up the problem, but this country is in serious trouble. The unemployment statistics obviously do not reflect the numbers who have quit looking, whose benefits have expired, etc., or who have disappeared, committed suicide, or, at best, are sleeping on heating grates, all former employees of companies caught in the uncollectible credit squeeze. And, not so obviously, the labor statistics do not reflect the massive numbers of people who were never eligible for unemployment and/or afraid to look for jobs at the unemployment office, having been self-employed but now out of business from the credit squeeze.

Handcuffing attorneys will only exacerbate the situation.

Granted, there are some attorneys who so abuse their current FDCPA exclusion that they should be disbarred(and the courts eventually will), but simply including attorneys in the FDCPA will not solve their abuses. FDCPA has never put a dent in the "outlaw" collection operations, although state regulation has, and blanket attorney inclsuion will only create innumerable unmanageable problems for the courts and the legislatures and will destroy the economy by eliminating debt re-payment altogether.

And such reforms, while well intended, cannot exist in a vacuum, nor can they exist in a world of thoroughly unbalanced anti-creditor(calling the FDCPA or similar legislation pro-consumer is a gross misnomer) legislation. More consumers are victimized by that type of regulation than are protected, and the more people are over-protected, the greater the burden passed on to the progressively decreasing remaining honest few.

For the true protection of consumers, I would suggest the following:

1. defeat of H.R. 237 in its present form
2. concentration on developing a totally separate statute or statutes aimed only at attorneys and which specifies in detail the exact practices to be prohibited
3. in conjunction therewith, a uniform procedural act for debt collection litigation which states could enact at their option
4. that the committee consider one of the following:
    a) completely outlawing all debt collectors and collection agencies and their activities by non-attorneys outside the litigation context

b)limiting collection agencies in the amount of time they can maintain an account for collection before an attorney must file suit
and/or
limiting the dollar amount of any account a collection agency can handle($100, $200, etc.)(since a debtor presumably can only pay X dollars each month, the larger the debt, the longer the agency will handle it, the greater the chance for a collection abuse(even if unintended))

If one encourages lawyer handling at an earlier point, the accounts will be handled in a more dignified, professional, civil manner, and the sooner litigation is filed, the sooner the debtor has a protector in the form of the Court. Similarly, communications can be limited to pleadings and letters, all to reach the court file, with no phone calls unless debtor requests same(return call,etc.). Meanwhile, years don't pass while the debtor goes free and the rest of the consumers/ taxpayers are stuck with paying for that debtor's dishonesty.

In addition, the appropriate committees of Congress should consider the following:

Reform of the bankruptcy laws:

a)complete elimination of the absolute discharge, to be replaced with court enforced stays/extended payment plans (this would eliminate the annual re-filings by the same debtor using a different address every year) and would not, as the present statute does, encourage "escapism" and theft

b)various work programs for bankrupts who cannot make payments(unemployed, etc.), with contributions by creditors to the program(similar to uninsured motorist funds,etc.) to be eligible for protection and distributions; similar to "workfare" programs; creditor to receive periodic shares of bankrupt "earnings"

c)elimination of the 90-day relation back exemption

d)extending the current four(4) month period for non-discharge to more accurately parallel the amount of time from default to lawsuit(to a year or more)

e)extensive regulation of attorneys representing bankrupts, particularly as to fee amounts, manner of receipt, timing of receipt(distribution from bankrupt estate, not pre-payment) and reporting on bankruptcy petitions and on tax forms

f) immediately fund a massive computerization/documentation program for management of the bankruptcy courts and their files and the archives, with computer hookups between all districts and a central computer in Washington and Philadelphia

g)elimination of "tenancies by the entireties" in bankruptcies, whereby spouse runs up debts for both, keeps in one name, bankrupts, keeps house; require instead that the house be kept but that payment plan be developed secured by second or third trust on house

In areas of general credit lending, force intellignece upon lenders by the following:

all credit transactions require drivers' license and photo identification, even credit card transactions

require photo and thumbprint on credit cards

require credit applications to be attached to a police-certified photo and finger-print, to be placed on card to be issued

eliminate any remaining federal regulation allowing a cardholder to lend card, then call in that user is not suthorized, thereby limiting cardholder's and user's total liability to $50 (keep the $50 limitation in stolen/lost card cases)

Innumerable other reforms must be considered, but I have run out of time. I would appreciate at some date in the near future an opportunity to meet with any interested committee member or assistant and discuss possible solutions to the debt collection attorney problem(if in fact it exists) and to the credit and collection(or, better yet, non-collection) problems as they relate to the economy.

Respectfully submitted,

Robert J. Sheridan, Attorney at Law
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Washington, D.C. 20009
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Chairman ANNUNZIO. Your time is up and, as I stated, whatever statement you have for the record will be printed in full.

All of us are suffering from the same dilemma. We need time. You know, we have a piece of legislation on the floor of the House that is known as the Gramm-Rudman bill. I do not think 50 percent of the Members of the Congress know what is in it, even the Senators who voted for it do not admit what is in it. That is a luxury we do not have, you see. We have to do the best we can under very, very serious, serious obligations, and we are talking now about the national debt, the deficit, the Gramm-Rudman Act and so forth. Here we are talking about making attorneys liable under the act just like a regular debt collector. If they are debt collectors they should be held responsible under the law, the same law that is applicable to debt collection agencies. If they do not want to be in the debt collection business, they ought to get out. So this is a simple way of handling it.

Ms. Leichtnam. Ten minutes.

STATEMENT OF KAREN LEICHTNAM, LEGISLATIVE ASSISTANT, HALT, AMERICANS FOR LEGAL FREEDOM

Ms. LEICHTNAM. Thank you, Mr. Chairman, members of the sybcommittee.

I appreciate the opportunity to appear before you this morning.

My name is Karen Leichtnam and I represent HALT, which is an organization of Americans for Legal Reform. We are a public interest legal reform consumer advocacy organization with more than 100,000 members throughout the country. HALT represents the consumer's interest in making our legal system more affordable, accessible and equitable for all citizens. A significant number of our members are especially concerned about matters of attorney discipline and, in general, the legal profession's accountability to the public. We are here today to share some of those concerns with you.

We support H.R. 237 as a step toward increasing public accountability for the legal profession. It would require attorneys who act as debt collectors to obey the rules that apply to all other debt collectors. According to the record of last year's hearing on this matter, attorneys were exempted under the original legislation because debt collection was considered only an incidental part of the practice of law.

There is no reason why an attorney should be allowed to harass a debtor, any more than any other debt collector should be allowed to do so. Whether 1 attorney or 50 are engaging in unfair debt collection practices, it is still too many. To the consumer-debtor, harassment looks and feels very much the same, whether it comes from a lawyer or nonlawyer. It is clear from the proliferation of attorney debt-collection firms that exemptions such as the existing one are an invitation to the abuses we are now witnessing. But even without the growth in attorney debt-collection firms there would be no reason attorneys should be exempted from the rules.

In defense of the exemption, we have heard that familiar old argument that attorneys are already adequately regulated by their State and local bar associations. This claim is brought by the organized bar whenever any outside regulation of the profession is considered. Many of you will remember this argument from the bars' recent battle to gain an exemption from Federal Trade Commission jurisdiction. HALT's experience has been that the State bar associations' attempts at self-regulation have never provided adequate protection for consumers. To illustrate this point, consider the following:

If you are a consumer in California, your belief in the willingness of the bar to protect you from lawyer harassment might be altered if you knew that, in 1984, the bar association received 8,932 complaints against lawyers, but disbarred only 11 lawyers. In fact, about 60 percent of the cases involving complaints made by the public are closed without any formal investigation. The bar closed 5,000 such cases in 1983 because it believed they lacked merit. In fact, nearly five times more California lawyers are suspended each year for failing to pay their bar dues than for committing offenses against clients or the public.

If you are a Florida resident who filed one of the 4,500 complaints against lawyers that were dismissed in 1982-83, you may wonder how well your bar and State courts are protecting you, as a consumer, from questionable lawyer practices.

If you are an Ohio citizen, your faith in the lawyer discipline system might be shaken by the knowledge that in the 27 years between 1957 and 1984 county bar associations found probable cause in only 651 complaints against lawyers, and of those only 366 were forwarded to the high court by the disciplinary board. There are 90 county bar associations in Ohio, and 54 have never filed a single disciplinary case with the State's high court.

Evidence such as this has convinced HALT that the main concern of State and local bar associations is not the protection of consumers, but the protection of lawyers. You may recall a pertinent story a spokesperson from the American Collectors Association related to this subcommittee last year, in hearings on the same matter. When one of the six public members of the California State Bar's Board of Governors proposed that the Bar publish a pamphlet explaining to the public how to complain about an attorney, an attorney-member of the board rose from his seat, slapped his hand on the table and said, "The State Bar is not a consumer complaint agency."

From HALT's experience and research, this attitude is fairly typical among State bar associations. Most State bar associations are "integrated" by law as extensions of the State supreme courts. As extensions of the judicial branch, the bar claims the exclusive right to regulate itself on matters such as attorney discipline. No profession can regulate itself adequately as though it had no regard for its own economic self-interest. Because of their obvious conflict of interest, State bar grievance committees cannot be viewed as a substitute for the protections given to consumers under the Fair Debt Collection Practices Act.

HALT's position is simple: we wholeheartedly support eliminating attorneys' exemption from the Fair Debt Collection Practices Act. We encourage you to give this measure your strong support. And do not let it end there. Despite the lack of opposition to this reform, it died of neglect during the last Congress. This is an important matter for many consumers, and it should be passed into law as soon as possible. Do not perpetuate the myth that lawyers are above the law.

I would be happy to answer any questions you may have about my testimony.

Thank you.

[The prepared statement of Karen Leichtnam follows:]

HALT An Organization of
AMERICANS FOR LEGAL REFORM

TESTIMONY OF KAREN LEICHTNAM, LEGISLATIVE ASSISTANT
HALT, AMERICANS FOR LEGAL REFORM
to the
SUBCOMMITTEE ON CONSUMER AFFAIRS AND COINAGE
HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
with regard to
HR 237, A BILL TO AMEND THE FAIR DEBT COLLECTION PRACTICES ACT
October 22, 1985

I am Karen Leichtnam, Legislative Assistant at HALT, An Organization of Americans for Legal Reform. I thank Chairman Annunzio and the members of this Committee for the opportunity to appear this morning to present testimony on HR 237, a proposal to amend the Fair Debt Collection Practices Act.

HALT is a public interest, legal reform consumer advocacy organization with more than 100,000 members throughout the country. HALT represents the consumer's interest in making our legal system more affordable, accessible and equitable for all citizens. A significant number of our members are especially concerned about matters of attorney discipline and, in general, the legal profession's accountability to the public. We are here today to share some of those concerns with you.

201 Massachusetts Ave., N.E. • Suite 319 • Washington, D.C. 20002 • (202) 546-4258

We support HR 237 as a step toward increasing public accountability for the legal profession. It would require attorneys who act as debt collectors to obey the rules that apply to all other debt collectors. According to the record of last year's hearing on this matter, attorneys were exempted under the original legislation because debt collection was considered only an incidental part of the practice of law.

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Evidence such as this has convinced HALT that the main concern of state and local bar associations is not the protection of consumers, but the protection of lawyers. You may recall a pertinent story a spokesperson from the American Collectors Association related to this committee last year, in hearings on the same matter. When one of the six public members of the California State Bar's Board of Governors proposed that the Bar publish a pamphlet explaining to the public how to complain about an attorney, an attorney-member of the Board rose from his seat, slapped his hand on the table and said, "The State Bar is not a consumer complaint agency." (4)

From HALT's experience and research, this attitude is fairly typical among state bar associations. Most state bar associations are "integrated" by law as extensions of the state supreme courts. As extensions of the judicial branch, the bar claims the exclusive right to regulate itself on matters such as attorney discipline. No profession can regulate itself adequately as though it had no regard for its own economic self-interest. Because of their obvious conflict-of-interest, state bar grievance committees cannot be viewed as a substitute for the protections given to consumers under the Fair Debt Collection Practices Act.

HALT's position is simple: we wholeheartedly support eliminating attorneys' exemption from the Fair Debt Collection Practices Act. We encourage you to give this measure your strong support. And don't let it end there. Despite the lack of opposition to this reform, it died of neglect during the last Congress. This is an important matter for many consumers, and it should be passed into law as soon as possible. Don't perpetuate the myth that lawyers are above the law.

I would be happy to answer any questions you may have about my testimony. Thank you.

1. San Francisco Examiner, March 24, 1985.
2. St. Petersburg Times, July 8, 1984.
3. Columbus Dispatch, May 26, 1985.
4. Oversight Hearing on the Fair Debt Collection Practices Act: Hearing on H.R. 4617 Before the Subcomm. on Consumer Affairs and Coinage of the House Comm. on Banking, Finance and Urban Affairs, 98th Congress, 2nd session (1984) (statement of John W. Johnson, Executive Vice President, American Collectors Association).

Chairman Annunzio. Thank you very much for your excellent statement.

Mr. Abrams, are you aware the Minnesota Bar Association has received 132 complaints about attorney collectors and that if that number of complaints is projected over the number of attorneys nationwide there are over 2,000 complaints annually about attorney debt collection tactics?

Mr. Abrams. First of all, I was not aware of the numbers. But the question I have and the quarrel that I have with numbers are numbers are meaningless when you throw out numbers of complaints made. I would like to know of these complaints that were made how many of these were pre-litigation, how many are post-litigation, how many are people who have written to the bar association complaining because of the fact their wages have been garnished after a judgment has entered against them or their bank accounts have been garnished after a judgment has been levied against them, or how many are complaining because a lawyer called them at 2 o'clock in the morning. There are certain things this act is specifically intended to regulate, and I do not think that the lawyers who are involved in the collection of debts are in substantial violation of those things that this act seeks to protect. To merely throw out numbers without categorizing those number of complaints I think is not relevant.

The young lady from HALT, Ms. Leichtnam, made a comment of 8,932 complaints and only 11 lawyers were disbarred in the State of California. Any number of complaints can be made for any number of reasons. A complaint cannot be made against a lawyer because of the fact he cannot return a call to his client. I submit to you, should his license to practice law be taken away from him because of the fact one lawyer did not return a phone call to his client who may call him every 3 weeks to say what have you done for me lately? How could you say that that is an indication of any misfeasance or malfeasance on the part of the attorney without knowing more about it?

The 13th annual report of the Attorney Registration and Disciplinary Commission of the State of Illinois lists categories of complaints that are made against lawyers by category, and there are virtually—well, there are at least 27 with the last one being other complaints that are made from excessive fees to incompetence to improper advertising, criminal conviction. There are so many different complaints that someone could make to a bar association, to cite the fact these complaints have been made without knowing more about it I think is irrelevant. Again, if somebody harasses, I think there should be some——

Chairman Annunzio. I thank you, Mr. Abrams.

Mr. Johnson, would compliance—each member is assigned 5 minutes. Would compliance with the Fair Debt Collection Practices Act impose an unfair burden on law firms that regularly engage in the collection of consumer debts?

Mr. Johnson. Mr. Chairman, members of the subcommittee, when the act was first passed, many of our members felt the act would impose unfair standards on them, but having worked with this law for 8 years we have discovered that is not true. We have discovered they can work within the requirements of the law and still conduct successful businesses, and we feel attorneys could do likewise.

Chairman ANNUNZIO. Thank you.

I have a question for Mr. Kurth. Are there more attorneys collecting debts now compared to a year ago?

Mr. KURTH. I do not have figures on that; I cannot answer that question. I would like to point out one thing for the record. As you know——

Chairman ANNUNZIO. In many of the letters I get, even from Members of Congress, they point out the fact that there are more attorneys now engaging in debt collection because of this loophole in debt collection law. I would like to point out to Mr. Abrams and some of the other members of the panel, we have about 125 Congressmen who have cosponsored this legislation, so they are receiving complaints. I do not argue the point; I am merely stating a fact. A man does not add his name as a cosponsor of a bill unless he has a very, very good reason.

Mr. ABRAMS. Or if he does not fully understand the ramifications of the bill. As you suggested yourself, it is possible with so much legislation. There is no question the intentions are good.

Chairman ANNUNZIO. These are cosponsors, they know what they are cosponsoring.

Mr. KURTH. I would like to point out for the record, as you are well aware, Mr. Sheridan made reference to the fact he thought it was hypocritical for us to be talking in terms of consumer protection since it was the industry that caused the problem. The record is clear our association from the very beginning worked with Members of Congress to bring fairness to and to protect the rights of consumers, and that is really—you summed it up in the hearings last year when you talked about the test of applicability to be on the activity. If you are involved in debt collection, then that activity ought to be regulated.

Chairman ANNUNZIO. Mr. Hiler. My time is up.

Mr. HILER. I thank the chairman.

One of the things that troubles me about what we are trying to do here is, I think, many of us can clearly see what abuses are definitely taking place. For instance, the ad in the paper saying as an attorney I am exempt from having to do this, therefore, if you come to me I can get your money sooner or a greater return on your dollar. Clearly that is someone who has decided to engage in debt collection as an active part of their practice, and I think most of us, all of us probably, would say they ought to come under the law. I personally get upset when I see attorneys advertise for helping people file bankruptcy to get out of their debts and then using the rubric the Congress has authorized you to do this. But I'm also troubled—I can imagine—let's just say I am a contractor and I do not necessarily build homes but maybe I do put in bathrooms for people or garages or something, but small projects, and I take one on for an individual. That individual does not pay me. I also happen to use an attorney maybe who does my will and maybe who makes sure I am filling out all the forms I need to fill out for zoning boards and all those kinds of things, and I go to that attorney and I say, gosh, you know, Joe, this person who I put a shed on the back of his house for, he owes me $1,500 and he won't pay me.

What do I do? The attorney says let me make a call to the person and see if we cannot get this resolved. My understanding is, and maybe it is incorrect, but my understanding is if that attorney were to make a call, if we adopted a repeal of the exemption he would fall under this act and with all of the ramifications that enter in there.

I am not sure that is what we want to do either. Maybe one of the gentlemen from the Collectors Association could respond.

Mr. Johnson.

Mr. Fletcher.

Mr. **Fletcher**. Thank you, Mr. Hiler.

The attorney acting on behalf and in behalf of a client, I feel almost certain that this act has nothing whatsoever to do with it. I think we are interested in attorneys who are operating a collection service——

Mr. **Hiler**. If you will forgive me for interrupting, but my understanding is if you completely repeal the exemption that the attorneys, whenever they make a call on behalf of collecting the debt, fall under the legislation.

Mr. **Fletcher**. Well, sir, the Fair Debt Collection Practices Act, I feel pretty well explains this and sets this out as to who is a collection service or a collector in the sense of a third-party collector. I am sure that an attorney acting professionally for his client would certainly not be considered or construed to be a collection service or to come under the Fair Debt Collection Practices Act as it is written. I may be wrong, but that is the way I understand it.

Mr. **Hiler**. Let's say that an attorney has 100 business clients and 13 of those clients a year ask him to try to get collection on a debt that is owed them. Would you say that the interpretation of the law would say that is someone who is regularly involved in collecting debts on behalf of their clients?

Mr. **Fletcher**. I wouldn't think so. I would think he was operating his professional business in a professional manner and representing these clients. Now, if this same attorney went out and advertised for business and if he called on hospitals, for instance, for their delinquent accounts, then I would say he comes under the Fair Debt Collection Practices Act because he is playing the ballgame that we are playing.

Mr. **Hiler**. Mr. Abrams, if you can keep it short, I only have 5 minutes.

Mr. **Abrams**. OK. That is another problem with the interpretation. That is why the Commercial Law League, who works with collection agencies, and many collection agencies use—they have to if they want to go further on behalf of their clients—use lawyers. We have studied this issue and we feel that that is the difference, that if in fact it is part of your business, then you will be covered, and if you are going to compete with the agencies then you should be covered.

If you are going to practice law just as the lawyer, as you are describing, he should not be covered.

Mr. **Hiler**. If I can interject here, in other words, with the way Mr. Fletcher described the situation, there is no disagreement with that.

Mr. ABRAMS. If in fact someone is conducting themselves as a collection agency they should be required to be under it. This is why we have proposed a compromise.

Mr. FIER. I'd like to answer Mr. Hiler's question with a hypothetical set of facts. Steve Fier takes care of Mr. Connelly's family will, contracts et cetera, et cetera, and is asked by Mr. Connelly to collect a debt from John Smith. I can treat John Smith one way under the type of limited exemptions we are talking about when Mr. Connelly is my client as compared to if Mr. Kurth comes in to see me for the first time and asks me to collect a debt from the same Mr. Smith. I can treat Mr. Smith differently under the same two fact situations just by virtue of my longstanding client relationship with Mr. Connelly.

I think Mr. Smith is going to be confused as to why when I am collecting on behalf of Mr. Connelly, I can be a little rougher—do some of the things the act would prohibit me from doing then when I am collecting for Mr. Kurth. Therefore, the only solution is outright repeal.

Mr. HILER. My time has expired.

Chairman ANNUNZIO. Mr. Morrison.

Mr. MORRISON. I have a few questions for you, Mr. Abrams, if I could. First of all——

Chairman ANNUNZIO. Mr. Abrams, will you make your answers short.

Mr. ABRAMS. I will try.

Mr. MORRISON. I will try to make my questions capable of a short answer. It is the position of the Commercial Law League that there should be some change here. In other words, that we should in some way limit the attorney exemption. Is that right?

Mr. ABRAMS. You could say that we——

Mr. MORRISON. That is the position you are taking?

Mr. ABRAMS. We realize that is what is going to happen.

Mr. MORRISON. You don't like it?

Mr. ABRAMS. Not necessarily. We are not against it if it is fair.

Mr. MORRISON. Let me refer you to page 3 of your testimony where you divided the world into four parts, and I would like to go through that a little bit with you. It would probably help, if you have it in front of you.

Basically, you say there are four instances in which attorneys do collections, and one of them is an area where you propose the exemption be removed and the other three areas you think the exemption still should apply. Now, with respect to the first one, and the first one has to do with where an attorney is engaged primarily in the collection of consumer debts and employs nonattorneys for such collection activity.

And your proposed amendment addresses this case. My first question is, why is the word "primarily"—in other words, why is it that an attorney who has a substantial debt collection practice, which might not be primarily, it might be one partner in a firm, why primarily? What is the purpose of the word primarily?

Mr. ABRAMS. If the attorney is going to compete with collection agencies——

Mr. MORRISON. That is the anticompetitive agency, let's put the consumer issue up here in terms of what happens to the consumer.

Why the word primarily? Why do we care if it is primarily if it is of a type of debt collecton? We will get on to other examples.

Mr. ABRAMS. Mr. Zion is here with me, and he would like to respond.

Mr. ZION. I participated in the drafting. We adopted it from the Federal Trade Commission report and the word used in that report was primarily.

Mr. MORRISON. There could be lots of other words, substantially, significantly——

Mr. ZION. Absolutely. We were trying to differentiate where the exact kinds of attorneys that you had heard in your prior hearings who really are not acting fully in the legal profession as by the way most of my organization does. We were trying to separate those because they are really collection agencies with the title of attorney, we know that. We are saying these are the kinds of people that should fall under this act.

Mr. MORRISON. But there are other people who have significant debt collection activities who are not primarily involved in collection. Primarily means almost everything of what you do do. That is what the word means.

Mr. ZION. No.

Mr. MORRISON. That is not what you intend?

Mr. ZION. No.

Mr. MORRISON. You mean someone who has it as a significant amount of their practice?

Mr. ZION. Yes.

Mr. MORRISON. I don't mean to hurry you, I only have 5 minutes. Beyond that you have included something about nonattorneys. There are two concerns I have about using nonattorneys. The first is in your description of what the problem is with employing nonattorneys for debt collection activity, but in your proposed amendment you say that those nonattorneys must have primary responsibility. It seems to me that that primary 4responsibility in your proposed amendment is another set of weasel words that will allow someone to say they don't have primary responsibility. That would be unauthorized practice of law if they did. Why the words primary responsibility in your proposal?

Mr. ZION. Honestly these were adopted word for word from the Federal Trade Commission report.

Mr. MORRISON. They use weasel words too, I guess.

Mr. ZION. We realize these are similar to the words you have in your act at the present time. For example, I may not call the employer, if I have a judgment. That is what your act says. If you apply it to lawyers I cannot call an employer to find out if I do have a person who is employed. They are weasel words, that is what it says. They don't fit the situation. I might suggest to you, I was very impressed with Ms. Fortney's suggestion this morning which I thought were the exact words the Commercial Law League was trying to put across, we were trying to separate out actual legal services from those kinds of attorneys who strangely exist because the Supreme Court allows us to advertise and have created the aura of being a law firm but are really collection agencies. That was the prime effort in trying to draft this.

Mr. **Morrison**. My time has expired. I don't know if you will give us a second round or not.

Chairman **Annunzio**. Go ahead with your second 5 minutes.

Mr. **Abrams**. Just one other comment to the use of the word primary. There are people who may prepare other things in the preparation of the lawsuit, but they have no contact with the defendant, for most law firms now are using paralegals because of the cost.

Unless their responsibility is to try to collect, I think they should not be considered primarily involved in the handling or processing.

Mr. **Morrison**. I don't know that I understand your distinction. I don't know what difference it makes to the consumer if he gets threatened or harassed by a person who is a lawyer or nonlawyer. Even within your own distinction between a collection type law firm and others, it seems to me whoever carries out the bad accounts ought not be the distinction. It ought to be whether the bad accounts are carried out or not. I understand you believe it should be referred to the bar association.

With all respect, I don't think that is much of a remedy for consumers. Let me go on and ask you about your other situations, because I really do want to know what it is that you are concerned about that would interfere with the proper practice of law by attorneys who have no interest in doing anything, harassing or illegitimate so those proper concerns would be recognized in the final allegation.

Your second kind of situation is where you say the debt collection is incidental to the actions of a lawyer, in a lawyer-client relationship. What I want to know is what is it that you want attorneys to be able to do in the regular representation of their clients that they can't do if they are subject to this act?

Specific things that attorneys should be able to do that they would not be able to do if they were representing someone incidental to their law practice—collection, I mean.

Mr. **Abrams**. I would, first of all I am concerned about whether or not I could communicate with a member of the family, a friend who may even be residing at the same place to try to gather information as to the whereabouts of this particular person or whether or not they are employed or in business, so I can make a determination as to whether or not it might be worthwhile to proceed to file a lawsuit, to find out whether or not they are contemplating bankruptcy, they are in the middle of a divorce.

All kinds of situations will determine whether or not you want to recommend you proceed further. You can get that information not always from the debtor because you can't find the debtor necessarily or he won't talk to you and you can make that determination. That is a possibility.

Some of the other problems that I have with the act, again are the number of incidences apparently that require interpretation because of the extensive educational program that has been set forth by the ACA. Now the lawyers have no way of getting all of these interpretations because they do not have the ACA representing them. I am not talking about somebody in the Commercial Law League, because we could take care of that. How about the other lawyers who may not have that information?

Mr. **Morrison**. If the lawyers can't understand the law, you know—let me go on and ask you some other quick things before my second 5 minutes run out. We have this question about litigation; the third class is referral for litigation. You say we believe that if you have to make a final demand, that demand would be subject to the act if we take away the exemption. You say we believe such a final demand is part of the litigation process and that to consider such a demand subject to the act would simply cause attorneys to skip that demand and proceed directly to suit.

In many States that demand is required as a prelude to suit so you couldn't skip it. But what is it—what do you want to do in that demand that would be a violation of the act? What kind of demand do you want to make such that you would violate the Act?

Mr. **Abrams**. Mr. Morrison, I don't personally want to do anything that would violate this law.

Mr. **Morrison**. What are you concerned about?

Mr. **Abrams**. I am concerned about the fact if I make a legitimate demand on a debtor, if I make a legitimate phone call and then I take the appropriate steps from A all the way down to the final act of collecting the debt and the debtor is upset with the fact he ultimately has to pay this bill, that he then will be allowed to bring these complaints and to file lawsuits against these lawyers merely as harassment to get even—

Mr. **Morrison**. Just like people do against the collectors because he is upset—

Mr. **Abrams**. Collectors cannot take this man to court, they cannot garnish his wages, they cannot make him come in on a citation to discover assets, they cannot ask the court enforce the provision to have the debtor picked up on a body attempt order because he repeatedly ignores court orders to appear to be examined to find out if that debt can be collected.

So I submit to you there is a lot less harassment that a collection agency could do if the debtor wants to view this as harassment.

Mr. **Morrison**. This debtor will have to find another lawyer to—

Mr. **Abrams**. No, sir. Anybody can file any lawsuit representing themselves. They may not have any more than a fool for a client, but if a lawyer is involved in the act of collection practice there are hundreds of cases. If I have to defend myself 10 times because 10 people are afraid—want to go back after me because I successfully enforce the rights of my client legally and ethically, then it creates a burden on me, I believe.

Mr. **Morrison**. Thank you, Mr. Chairman.

Chairman **Annunzio**. Mr. Prins has a couple of questions.

Mr. **Prins**. Mr. Sheridan, you have been sitting there very quietly, and I wanted to give you some publicity. You were good enough to come here and you are a collection lawyer. I don't want you to hide your light under a bushel. I have a copy of a letter, a brochure that you send out to prospective clients, and I would like to ask you some questions about it.

First of all, we have talked this morning about a lot of figures and a lot of generalities and everything, but no one has been specific or backed it up with facts, so I would like to ask you where your information comes from so we can check some of it.

In a letter to collection departments, which I guess is to various businesses around the area, you make the statement that credit agencies, talking about debt collection agencies, always overcharge and sit on accounts until they are completely lost.

Is that a factual statement?

Mr. SHERIDAN. I believe so. My experiences of cases I have received from collection agencies——

Mr. PRINS. There is not a single collection agency in the country that doesn't overcharge?

Mr. SHERIDAN. No, I think for the net return to the creditor and the amount of time it takes while these people are legitimately handcuffed by various types of legislation, even the most honest ones are fairly powerless as they go along.

I am not pointing out it is their fault. But the fact is they will have to hang on to these accounts and continue to try to generate some kind of recovery, whether it is a couple of dollars a month or whatever.

The fact is in the meantime the damages to the creditor are innumerable, namely that the debtor has bought himself time to go into hiding somewhere else, he has defeated the jurisdictional limitations——

Mr. PRINS. What I was getting at is this is your opinion, is it not?

Mr. SHERIDAN. It is not my opinion, it is my experience from dealing with both direct referrals from creditors and collection agencies. They don't have any kind of power to do much, and the fact is in order to make any kind of money nowadays compared to before they have to try to take whatever kind of deal—it is literally the debtor controls all.

The debtor can tell them "I'll pay this or pay that, because the minute the collection agency wants to refuse the debtor's dictates they have to turn around and say, well, I will have to refer it to my attorney and we lose the fee.

Mr. PRINS. Let me go on then in your letter. You say, "so forget about collection agencies—all useless—and collection agencies—who spinelessly beg debtors for pittance payments—and go with a firm that pursues debtors with vengeance.

Now, I would like to know what kind of vengeance you use on debtors?

Mr. SHERIDAN. I think there is perhaps a poor selection of colorful words for which I am eternally being penalized by various well or slightly educated liberals around the country. But the fact is that the general——

Mr. PRINS. I am not slightly educated.

Mr. SHERIDAN. That can be taken out of context.

Mr. PRINS. I am reading your letter. I would read the whole letter if I had time.

Mr. SHERIDAN. We will go after these payments. By pursuing it in our pure litigation process, and without getting into the agreement, give me $5 or $10 a month. Because we immediately file litigation, the debtor is protected because he has completely eliminated a stage where he gets phone calls every month from someone who wants his $5 payment.

My approach is probably the fairest and most effective for both consumers and the creditors in the long run because it eliminates the very evils that Congress and legislatures around the country have attempted to eliminate.

The fact is if you get the thing into litigation right away, if you serve the person the court papers, the court has various procedures which can be followed which eliminate things like variation in the debt, you can come to stipulated settlement agreements. These things can be closed off very effectively.

Mr. PRINS. I hate to cut you off, but I am running out of time and I did want to give you full credit and to let you blow your horn a little bit. You say in here that you are a national law firm. Could you tell me, in addition to your office at R Street, what other offices in the country Robert J. Sheridan has and give me their addresses?

Mr. SHERIDAN. At the time I sent this I had one in Falls Church, VA, and College Park, MD. There are numerous law firms we have around the country. The meaning of national law firms was to suggest to the creditors what they should do is instead of wasting a lot of time in the collection agency process on losing accounts, not getting an effective return, to protect the consumers——

Mr. PRINS. Let me interrupt you again, sir. You are not being responsive to the question. You say in your letter, "why not use a national law office like mine?" Now you said you have an office on R Street, one in College Park and one in Falls Church. That is a pretty small——

Mr. SHERIDAN. I am using the word national to describe the fact that I can handle through that office accounts by debtors around the country. It is wiser for the creditor to just get the painful process over with, send the thing down, we will send one letter out telling the debtor this thing has been placed with us, that if they don't respond in some way we will discuss the debt with them, if they call and have any kind of proof they have paid up or whatever, but the matter will be placed within 5 to 10 days with counsel within the debtor's jurisdiction.

Mr. PRINS. Are you a national law firm?

Mr. SHERIDAN. In the sense I handle various debts around the country, yes.

Mr. PRINS. Mr. Abrams, do you consider a single lawyer with one or two offices who can go to other law firms and refer work to be a national law firm?

Mr. ABRAMS. No, I could not.

Mr. PRINS. Let me go one step further. I have a lot of questions but I am going to cut it off.

Mr. Abrams, I would like a yes or no answer because I want to get on to this. You indicated that one of things that you want to do is unclog the courts by not having a lot of these cases and a lot of these motions and things go into the court system. Is that basically correct?

Mr. ABRAMS. If I could collect a debt without going into court I think that is probably a more effective way, cost-effective to me, more effective to my client and removes this burden from the courts.

Mr. PRINS. Mr. Sheridan, you say that we have aggressive litigation techniques, we file numerous pretrial motions to accelerate judgment and maintain the pressure on the debtor or the debtor's attorney to squeeze cash payments during the pendency of the suit. It looks to me like what you want to do is file as many papers as possible. Is that what the goal is?

Mr. SHERIDAN. If the courts in this country, and I think it is the courts' province to determine what kind of procedural rules can be used in discovery and not the Congress. If a debtor feels oppressed he has a Legal Aide Society to go to. The fact is—I might point out there is an ever decreasing percentage of my business, I don't even know what it is at this point, that is actual consumer litigation. These things were directed at Fortune 500 companies and now your consumer type of credit. They dealt with the large companies of the world, the majority of accounts I wished to receive from that type of solicitation and ones I did receive were from large companies suing local companies on a supplier or manufacturer item they delivered and wasn't paid for.

It has little to do with consumer litigation. The fact is, yes, if the court—there is no reason to segregate out and give a special privilege in court, in local court proceedings, to someone just because he happens to be able to give himself a label of debtor. The courts will provide for this.

As to the suggestion this might clog the court system somehow, I think it will force the court systems to come up with better, more efficient summary procedures. If the simplest procedure is to get these matters into litigation as soon as possible and have the courts, and you can regulate it to the point where you say once it goes into litigation, any contact between the debtor and the creditor's lawyers be in writing, unless the debtor places a call immediately. It is one of many things that has to be done so that the passage of this legislation in this form would not completely freeze all litigation.

Mr. PRINS. Thank you, Mr. Chairman.

Chairman ANNUNZIO. We are attempting to close a loophole. I want to ask this question. Ten years ago we had lawyers in the collection business. Could you tell the subcommittee in your judgment, because of the loophole, would you say that the number of lawyers have increased?

Mr. KURTH. Certainly there are more young people graduating from law schools today, and many of them are turning to the debt collection——

Chairman ANNUNZIO. Would you say they are taking advantage of the loophole?

Mr. KURTH. I don't think there is any question that they are taking advantage of the loopholes. Contrary to some of the testimony that has been introduced this morning and without any reflection on the members of the collection service industry, I believe attorneys who are as smart as the members of our industry, would have no difficulty complying with the act, interpreting it and being able to provide the consumer protection as the law presently provides.

Chairman ANNUNZIO. I haven't seen any indication, but have you seen an indication that the Federal Trade Commission is policing the conduct of attorney collectors either under the Fair Debt Collection Practices Act or the Federal Trade Commission Act? Have you seen any evidence?

Mr. KURTH. I am sure that the Federal Trade Commission is policing the act to the best of their ability and there has been one highly publicized case, but the difficulty is calling attention to the problems consumers do encounter and therefore having to make a judgment as to whether this is primarily a debt collection agency practice by an attorney. It is a judgment call.

Chairman ANNUNZIO. Ms. Leichtnam, in your capacity as consumer advocate, have you seen any evidence that bar associations are willing to police the debt collection practices of lawyers?

Ms. LEICHTNAM. In two words, absolutely none.

Chairman ANNUNZIO. If you haven't seen any, then you are not aware of any disciplinary provision that might have resulted from these lawyers being brought before the law association?

Ms. LEICHTNAM. No, sir, I am not.

Mr. SHERIDAN. I think the bar association would be more in a position to handle those complaints. I am in competition with a lot of lawyers for this type of business. I think some of these lawyers' practices are unreal. It is a collection operation. I think the bar association is inundated with complaints by people who sit there and say, I broke my finger and the lawyer didn't get me a million dollars, the lawyer has to spend about 15 to 20 hours of his time explaining you are innocent until proven innocent. If these types of things were eliminated from the bar grievance process they would be more in a position to handle debt type complaints.

Chairman ANNUNZIO. I want to express the appreciation of the entire subcommittee to all of you for taking time out of your busy days and traveling to Washington to appear before this subcommittee. All of your statements have been made part of the record.

We will probably have another markup session next week on the legislation. You have all made excellent statements, you have provided the views of the organizations that you are privileged to represent.

There is no law, as you know, most of you are lawyers, written without loopholes. We have a loophole in this legislation. Hopefully we can somehow manage to work it out so that it will not hurt anybody. I am not interested in hurting lawyers.

Needless to say I am not out to hurt consumers. As chairman of this subcommittee, I have over the years tried to protect and enhance the consumers of this Nation. I think the track record of the subcommittee has been good legislation. I know that your testimony is going to be most helpful to the subcommittee in its deliberations. I want to thank all of you for being with us this morning.

The subcommittee is now adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

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